

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA,)

)

Plaintiff,)

)

VS.)

NO. 1:12CR02

)

)

)

RYAN DANDRE HEARN,)

)

)

)

Defendant.)

)

)

BE IT REMEMBERED, that the above-captioned cause came on to be heard, on this, the 6th of September, 2012, beginning at approximately 10:00 a.m., before the HONORABLE MICHAEL P. MILLS, Chief Judge presiding, when and where the following proceedings were had, to wit:

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P R O C E E D I N G S

10:00 A.M.

THE CLERK: The Court calls Cause
Number 1:12CR02, United States of America versus
Ryan Dandre Hearn. This is a motion hearing on
a Motion to Suppress.

THE COURT: All right. Who do we have
for the defendant?

MR. DAVIS: Chip Davis, Your Honor.

THE COURT: And you have your client
with you?

MR. DAVIS: Yes, sir. He's sitting at
the table.

THE COURT: All right. For the
Government?

MR. COLEMAN: Rob Coleman, Your Honor.
And also sitting at counsel's table is -- with a
request for the Court's permission to allow
Special Agent Dale Stallings with the Bureau of
Alcohol, Tobacco and Firearms to be allowed --

THE COURT: Okay.

MR. COLEMAN: -- we request that he be
able to remain at counsel's table.

MR. DAVIS: No objection, Your Honor.

THE COURT: That would be fine. All

1 right. This is a motion filed by the defendant,
2 and I suppose the best way to proceed is to let
3 the defendant -- excuse me -- let the Government
4 put on its proof in response.

5 MR. DAVIS: Yes, sir.

6 THE COURT: And then I'll hear from
7 both of you --

8 MR. DAVIS: Thank you.

9 THE COURT: -- if that will be
10 agreeable.

11 MR. COLEMAN: That is agreeable, Your
12 Honor.

13 THE COURT: All right. Who are you
14 going to call first?

15 MR. COLEMAN: Well, Your Honor, before
16 we get to the first witness, I would like to
17 state on the record that I've already provided
18 some documentation to Mr. Davis concerning the
19 prior criminal history of one of the witnesses.
20 It's not the first witness I'm going to call,
21 but it's Mr. James Gillentine, who will be
22 called as a witness here and through the course
23 of this hearing.

24 Mr. Gillentine does have a criminal
25 history. I've known this for years. I have

inquired as to the -- what I intend to do is to make the Court aware of the fact that the Government knows, and this dates back to 1982.

And due to the fact that it's that old, prior to the trial, the Government will be moving in limine to exclude any mention of his prior history at this juncture.

I wanted the Court and defense counsel to know that there is an issue with one of our witnesses, and he does have a criminal history.

THE COURT: Any response?

MR. DAVIS: No, Your Honor. I guess we'll just address it as it comes up.

THE COURT: Okay. That will be fine.

MR. COLEMAN: Thank you, Your Honor. At this time, the Government will call Monroe County Deputy Ricky Payne, who is located back there in the witness room to the left.

(SHORT PAUSE).

RICKY PAYNE,
having been first duly sworn by the Clerk, was examined and testified as follows:

MR. COLEMAN: May I proceed, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. COLEMAN:

Q. State your name for the record, please.

A. Ricky Payne.

Q. And, Mr. Payne, what is your current occupation or profession?

A. Deputy Sheriff of Monroe County.

Q. And how long have you served in that capacity?

A. I have been in Monroe County since April of this year.

Q. And what are your duties with the Monroe County Sheriff's Department?

A. I am a patrol deputy. I patrol the county streets and answer calls from 911 and also from the Sheriff's Department.

Q. All right. Deputy Payne, let me call your attention back to July the 9th of the year, 2009.

What was -- what was your occupation or profession at that time?

A. I was the Chief of Police in Nettleton, Mississippi.

Q. And how long did you serve in that capacity?

1 A. From January of 2008 until December of
2 2010.

3 Q. And what were your duties as Chief of
4 the Nettleton Police Department?

5 A. To oversee all of the duties and make
6 sure all of the officers done their jobs
7 correctly and the payroll and stuff like that.

8 Q. Now, I've already called your attention
9 to July 9th, 2009.

10 Do you recall anything unusual happening on
11 that date?

12 A. Yes, sir. There was a robbery at the
13 Gold Exchange on Will Robbins Highway in
14 Nettleton.

15 Q. All right. In Nettleton?

16 A. Yes, sir.

17 Q. Okay. Now, the Gold Exchange is a
18 business that does what?

19 A. It is a pawn shop that, you know, pawns
20 items and sales gold and jewelry and stuff like
21 that.

22 Q. Okay. To your knowledge, do they also
23 sell firearms?

24 A. Yes, sir, they do.

25 Q. So it is a -- what we would refer to as

1 a business operating under a Federal firearms
2 license?

3 A. Yes.

4 Q. Okay. And I think there was an
5 adjoining business to the Gold Exchange.

6 What was that business?

7 A. (No response).

8 Q. Well, let me ask -- let me just -- let
9 me ask you this: Were there two victims of
10 this -- this robbery, this crime that occurred
11 on that day?

12 A. Yes.

13 Q. Who were they?

14 A. They were James Gillentine and Mark
15 Burroughs.

16 Q. Now, when you -- I'm -- let me just ask
17 you this: Were you on duty that day as Chief of
18 Nettleton?

19 A. Yes, I was.

20 Q. And did you receive word that a robbery
21 had occurred at the Gold Exchange?

22 A. Yes.

23 Q. What did you do based on that
24 information?

25 A. Okay. I went to the Gold Exchange, and

1 at that time, I secured the scene. I helped the
2 officer that was on duty, Mr. Steve Cooper. He
3 helped me secure the scene, and then at that
4 time, Officer Cooper started taking reports from
5 Mr. Gillentine and Mr. Burroughs.

6 Q. Did you or Officer Cooper or any other
7 Nettleton police officer get a description of
8 the person who committed this crime and a
9 vehicle they fled in?

10 A. Yes.

11 Q. Now, were you present when Mr. James
12 Gillentine, one of the victims in this crime,
13 was interviewed there after the crime?

14 A. I probably -- I probably was. I was --
15 I was in and out of the scene at that time while
16 Officer Cooper was taking statements.

17 Q. Okay. Let me ask you this: Are you
18 aware of any rewards being made -- or offers or
19 a reward being made by Gillentine?

20 A. Yes. The TV, 9 Live, was there, and I
21 done a little interview. Then they done an
22 interview with Mr. Gillentine, and that's when
23 he offered a \$1,000 reward for any information
24 -- for any information about the crime.

25 Q. All right. Now, a few days later --

1 the crime occurred on July 9th, correct?

2 A. Correct.

3 Q. All right. On July 13th, do you
4 receive any additional information regarding the
5 robbery?

6 A. Yes, I did.

7 Q. From whom?

8 A. Mr. Gillentine.

9 Q. Did Mr. Gillentine, based on the
10 information he had been provided, take you to a
11 location in Verona, Mississippi?

12 A. Yes, sir, he did.

13 Q. All right. Do you know why he took you
14 there?

15 A. (No response).

16 Q. Had he received information on --

17 A. Yes, sir. The information -- what he
18 told me the information that he had received was
19 that one of the suspects was at this home on
20 Panel Street (phonetic) in Verona.

21 Q. And on that date, did you accompany
22 Mr. Gillentine, or did you and other officers go
23 to Panel Street in Verona, Mississippi?

24 A. Yes, I did. Mr. Gillentine did not.

25 Q. Okay. How did you know where to go?

1 A. Mr. Gillentine drove by and pointed the
2 house out to me.

3 Q. Okay. He pointed it out to you.

4 And it was you and maybe one of your
5 officers?

6 A. Yes. It was me and Officer Steve
7 Cooper, Chief J.B. Malone (phonetic) with the
8 Verona Police Department, and there was another
9 Verona officer but I can't remember his name,
10 sir.

11 Q. Okay. But since you were out of your
12 jurisdiction, there were other --

13 A. That belonged to the Chief.

14 Q. So you said the -- Mr. Gillentine drove
15 passed and pointed the house out to you?

16 A. Yes, sir.

17 Q. All right. What did you do?

18 A. I went back to Verona Police
19 Department, and Chief Malone called in one of
20 his other officers to go with us. So we went
21 back to the residence and knocked on the door.
22 There were several people in the residence. We
23 got them out and started talking to them.

24 And everybody that had a legitimate ID
25 except for one, and he gave a false name but he

1 had no ID.

2 Q. What was the -- what is your
3 description of the person that gave you the
4 false name?

5 A. He was a slender black male with a
6 shaved head.

7 Q. Okay. Now, to your knowledge, the
8 person or persons who committed the robbery some
9 days earlier, did either of them have a shaved
10 head?

11 A. Not that I was aware of.

12 Q. Okay. Did one of them have a dis- --
13 what I refer to as a distinctive hairstyle?

14 A. The photos on the driver's license that
15 I received -- that I found in the vehicle after
16 we located the vehicle --

17 Q. Well, let me ask you this: Based on
18 the descriptions given to you by Mr. Gillentine
19 and Mr. Burroughs --

20 A. Yes. They had -- one of the suspects
21 had dreadlocks.

22 Q. Okay. Now, you said one of the
23 individuals did not give you -- or did not have
24 identification.

25 A. Correct.

1 Q. He gave you a false name.

2 A. Correct.

3 Q. All right. Was he detained?

4 A. Yes, he was.

5 Q. And he was later found out to be whom?

6 A. Ryan Hearn.

7 Q. Okay. Would you recognize Mr. Hearn if
8 you saw him today?

9 A. Yes, sir.

10 Q. Would you look around the courtroom and
11 see if you see the person that -- that you
12 detained that day.

13 A. Yes, sir. (Witness complies).

14 Q. Okay. Would you point to him and
15 describe what he's wearing, please.

16 A. (Witness complies). An orange jump
17 suit.

18 Q. That's Mr. Hearn that you detained that
19 day?

20 A. (Witness nodded head affirmatively).

21 MR. COLEMAN: All right. Your Honor, I
22 would ask the record to reflect the witness has
23 identified the defendant in this cause.

24 THE COURT: All right.

25 MR. COLEMAN: Thank you.

1 BY MR. COLEMAN:

2 Q. Now, after Mr. Hearn was detained, did
3 you find anything at the residence?

4 A. The only thing I found at the residence
5 was a Ford key that nobody made claim to, so I
6 took the key. And afterwards -- excuse me.

7 THE WITNESS: Is there water in there?

8 THE COURT: You can get some water.
9 Just be careful pouring it out.

10 (SHORT PAUSE).

11 THE WITNESS: I apologize.

12 (SHORT PAUSE).

13 BY MR. COLEMAN:

14 Q. Better?

15 A. (Witness nodded head affirmatively).

16 MR. COLEMAN: All right. May I
17 proceed, Your Honor?

18 THE COURT: (Nodded head
19 affirmatively).

20 BY MR. COLEMAN:

21 Q. Deputy Payne, you said you found a
22 key.

23 Had you already been told that the vehicle
24 used in the robbery was a Ford vehicle?

25 A. Yes, sir, I had.

1 Q. So did that mean anything to you when
2 you found this key to the Ford?

3 A. Yes, sir. It meant maybe that there
4 was a possibility that it might fit the vehicle
5 that I was looking for.

6 Q. Okay. And after Mr. Hearn had been
7 detained, I believe you said he was sent to the
8 Monroe County Sheriff's --

9 A. Yes, sir.

10 Q. -- Department --

11 A. Yes, sir.

12 Q. -- is that correct?

13 A. Yes, sir.

14 Q. What did you do with this key? Where
15 did you go?

16 A. Okay. I got a cell phone call from
17 Mr. Gillentine stating that he had located the
18 vehicle.

19 Q. And, again, was that based on
20 information provided to him by someone who came
21 forward for the?

22 A. -- correct.

23 Q. -- reward?

24 A. Correct.

25 Q. Okay. And did you -- where -- where

1 did he -- where did he tell you to meet him?

2 Did he tell you where to go?

3 A. I met him back at the Verona Police
4 Station, and from there we went to -- it was
5 County Road 814, which is what we call
6 Plantersville Richmond Road. It runs from
7 Verona to Plantersville.

8 And we went to -- I can't remember the name
9 of the church on the -- County Road 814, but the
10 vehicle was located behind the church.

11 Q. And when you got there, was
12 Mr. Gillentine and this person that was showing
13 him around -- was that person still there, or
14 was it just Mr. Gillentine?

15 A. It was just Mr. Gillentine there.

16 Q. Okay. And when you got there, what did
17 you do?

18 A. Okay. The first thing is I looked over
19 the vehicle. I run the tag number. Then I
20 happened to think about the key that I had found
21 at the house on Panel Street, so I just put it
22 in the door on the driver's side and it opened
23 right up.

24 Q. And once you opened the door, did you
25 see anything in the car?

1 A. Not at that time. Then I happened to
2 glance down on the door panel on the driver's
3 side. Do you know how they have a pocket a lot
4 of times made in the door panel?

5 Q. All right. And this is a Ford Escape?

6 A. Yes, sir.

7 Q. What I refer to as a small SUV --

8 A. Yes, sir.

9 Q. -- a small sport's utility vehicle?

10 A. Yes, sir.

11 Q. Okay. And it had a pocket on the door?

12 A. Yes, sir. On the door panel.

13 Q. Okay. What -- and what did you see?

14 A. I seen a set of driver's license, so I
15 just reached and got the driver's license. And
16 it was a -- it had a black male with dreadlocks
17 and with Ryan Hearn on the driver's license.

18 Q. Now, did you recognize the person in
19 the photograph?

20 A. (No response).

21 Q. When you saw the photograph, did you
22 recognize -- did you know who it was?

23 A. No, sir, not at that time.

24 Q. Did you show it to Mr. Gillentine?

25 A. Yes, sir. He seen it.

1 Q. And later that day, did you also show
2 it to Mr. Burroughs?

3 A. Yes, I did.

4 Q. That's Mr. Mark Burroughs, who is also
5 one of the victims of the -- of the crime?

6 A. Correct.

7 Q. Now, after you -- you retrieved this --
8 this driver's license, did you do a search of
9 the vehicle?

10 A. Not at that time.

11 Q. What did you do?

12 A. It was a -- I called the wrecker
13 service, and they transported it to their
14 facility and put it in a secured building
15 overnight until I could get a warrant the next
16 morning.

17 Q. What did -- you said you showed it to
18 Mr. Gillentine there, and I assume you meant
19 there at the scene.

20 A. Yes, sir.

21 Q. I mean, right after you found it --

22 A. At the scene.

23 Q. -- he's there at the --

24 A. Yes, sir.

25 Q. -- scene.

1 A. He's there. He seen me when I pulled
2 it out, so he automatically, you know, looked at
3 it.

4 Q. Okay. What did you eventually do with
5 that driver's license?

6 A. After I was through with it, I give it
7 back to Mr. Hearn's mother.

8 Q. Did you do anything with it before you
9 gave it to Mr. Hearn's mother?

10 A. Other than make a photocopy of it.

11 Q. Okay. You did make a photocopy of it?

12 A. Yes, sir.

13 Q. I'm going to show you what's been
14 marked Government's Exhibit Number 1.

15 MR. COLEMAN: Your Honor, please, it
16 may be easier for me just to hand it to him, if
17 the Court would rather.

18 MR. DAVIS: Your Honor, if the
19 Government will put it on the display.

20 THE COURT: Yeah, I think it would be
21 easier on the screen. If you have any
22 objections to any of this, just let me know,
23 Mr. Davis; otherwise, we'll go ahead and admit
24 it.

25 MR. DAVIS: Yes, sir.

1 MR. COLEMAN: I think I got a little
2 assistance there. I appreciate that.

3 (WHEREUPON, THE ABOVE-MENTIONED
4 DOCUMENT WAS MARKED AS EXHIBIT NO. 1 TO THE
5 TESTIMONY OF THE WITNESS AND RETAINED BY THE
6 COURT).

7 BY MR. COLEMAN:

8 Q. Right on the screen in front of -- in
9 front of you is Government's Exhibit Number 1.

10 Do you recognize that?

11 A. (Examining photocopy). Yes, sir, I do.
12 That's --

13 Q. What is that?

14 A. Sir?

15 Q. What is that on the screen?

16 A. That is the driver's license of Ryan
17 Hearn.

18 Q. Is that a fair and accurate depiction
19 of the -- of a photograph of the license that
20 you see you got out of that Ford Escape?

21 A. Correct.

22 Q. And this, in fact, is the driver's
23 license you took, showed to Mr. Gillentine and
24 then later returned to the defendant's mother
25 after making this photocopy; is this correct?

1 A. Correct.

2 Q. And it -- it appears to be just like
3 the -- the license that you recovered that
4 night.

5 There's no material -- material alterations
6 or deletions, any changes?

7 A. No, sir.

8 MR. COLEMAN: Your Honor, at this time
9 we're going to move to introduce Government's
10 Exhibit Number 1.

11 THE COURT: Let it be entered.

12 MR. COLEMAN: Thank you, Your Honor.

13 BY MR. COLEMAN:

14 Q. Let me ask you this. I'm sorry. I'm
15 going to put this back up here, Government's
16 Exhibit Number 1.

17 Can you describe the hairstyle of the person
18 in that photograph?

19 A. (Examining photograph). Yes, sir. It
20 appears to be dreadlocks to me.

21 Q. Thank you. Deputy Payne, did you or
22 anyone else under your charge, under your chain
23 of command at Nettleton Police Department ever
24 show a photo display, photo lineup, photo array,
25 show it to any -- a group of photos to

1 Mr. Gillentine or Mr. Burroughs regarding this
2 robbery?

3 A. Not to my knowledge, sir.

4 Q. Okay. To your knowledge, did anyone
5 ever do that?

6 A. ATF agent, Dale Stallings.

7 MR. COLEMAN: The Court's indulgence
8 one moment, Your Honor.

9 (SHORT PAUSE).

10 MR. COLEMAN: Your Honor, we tender the
11 witness.

12 THE COURT: All right. Mr. Davis.

13 MR. DAVIS: May I proceed, Your Honor?

14 THE COURT: You may.

15 CROSS EXAMINATION

16 BY MR. DAVIS:

17 Q. Good morning, Deputy Payne.

18 A. Good morning, sir.

19 Q. My name is Chip Davis, and I represent
20 Mr. Hearn. Now, let me ask you this question,
21 if I would, sir.

22 You say immediately after the robbery, you
23 and Mr. Gillentine got on the television and
24 Mr. Gillentine told essentially North
25 Mississippi that he was offering a \$1,000

1 reward; is that right?

2 A. Correct.

3 Q. Would you consider \$1,00 to be a fair
4 amount of money?

5 A. That's a pretty good bit of money.

6 Q. That's a pretty good bit of money.

7 As a matter of fact, it's -- if a person is
8 on disability, that's more than they bring in,
9 in a lot of cases; isn't that correct?

10 A. You're correct.

11 Q. And, in fact, if a person is working a
12 McDonald's-type job or a convenience store-type
13 job, that's more than they'll make in two-weeks
14 work; isn't that correct?

15 A. You're correct, sir.

16 Q. So somebody or anybody then would have
17 an incentive to try and get that \$1,000; isn't
18 that correct?

19 A. I would say so, sir.

20 Q. All right. Now, who was the person
21 that called Mr. Gillentine to say one of the
22 suspects was at the house in Verona?

23 A. Okay. On that, sir, I have -- I don't
24 have a clue who that person was.

25 Q. Okay. So you don't know this person.

1 You don't know their character.

2 A. No, sir.

3 Q. You don't know whether they are
4 criminals themselves, do you?

5 A. No, sir, I do not.

6 Q. You don't know if they're honest or
7 dishonest.

8 A. No, sir, I do not.

9 Q. You don't know if maybe they had a
10 grudge against Mr. Hearn for some reason.

11 A. I do not, sir.

12 Q. Now, between the date of the robbery
13 and the date of, I call it, a show up -- a
14 one-person show up where the people -- tell me
15 exactly what happened. All right. You go to
16 the house in Verona.

17 A. Correct.

18 Q. All right. Under what -- I mean, did
19 you have a search warrant?

20 A. Not at that time.

21 Q. Okay. Did you have an arrest warrant
22 for anybody in the home?

23 A. Not at that time.

24 Q. Okay. What legal authority did you
25 have to go to the home and ask the people in the

1 home to come out in the yard?

2 A. Okay. The reason I went in was because
3 of the knowledge, you know, that Mr. Gillentine
4 had passed on to me.

5 Q. Okay. Did Mr. Gillentine sign an
6 Affidavit?

7 A. No.

8 Q. All right. So there's no Affidavit;
9 there's no arrest warrant; there's no search
10 warrant, correct?

11 A. At that time what we done was we just
12 detained everybody. I went and got the search
13 warrant --

14 Q. Okay.

15 A. -- and then came back.

16 Q. You detained everybody?

17 A. Not detained but, you know, when --

18 Q. Okay. Now --

19 A. -- there were no handcuffs or nothing
20 like that.

21 Q. Well, isn't that the word that you just
22 used, you detained everybody?

23 MR. COLEMAN: Your Honor, I'm going to
24 object to the relevancy of this line of
25 questioning. It has no bearing on the motion

1 that's before the Court. The Motion to Suppress
2 is the identification of the photo lineup.

3 THE COURT: Overruled.

4 BY MR. DAVIS:

5 Q. Now, the word you just used was, we
6 detained everybody, correct?

7 A. Yes, sir. What I meant by that -- I
8 know where you're coming from, but detained a
9 lot of times is when we put handcuffs on them
10 but they're not under arrest. No handcuffs were
11 put on them at that time.

12 Q. Okay. Was anybody in that house free
13 to leave?

14 A. I would say so, sir. You know, that
15 wasn't --

16 Q. Okay. What would you have done if
17 Mr. Hearn or anybody else had said, no, thanks.
18 I'm not staying, and gotten in their car and
19 driven away -- drove away?

20 A. There wouldn't have been much I could
21 have done.

22 Q. Okay. Why did you call it a detention
23 then?

24 A. Just a mistake on my vocabulary, I
25 guess, sir.

1 Q. Okay. What legal authority did you
2 have to ask anybody inside that house to come
3 outside that house?

4 A. Well, I was in the process of looking
5 for a suspect of this robbery.

6 Q. Okay. I understand what you were
7 doing.

8 My question, though, is: What legal
9 authority under the law did you have to ask
10 people inside a house to walk outside the
11 house?

12 A. Well, actually all of them didn't come
13 out because I was looking for a male.

14 Q. Okay. What legal authority did you
15 have to ask any of the males inside the house to
16 come outside the house?

17 A. None, I don't guess, sir.

18 Q. All right. Now -- all right. So you
19 got everybody out in the yard or at least all of
20 the males.

21 How did Mr. Gillentine know to drive past?

22 A. Mr. Gillentine drove past before I ever
23 went to house.

24 Q. All right. When did he drive --

25 A. He pointed -- he pointed it out to me.

1 Q. When did he drive past again?

2 A. Now, if he drove past again, sir, I
3 don't remember it.

4 Q. Okay. So he didn't identify anybody in
5 that yard?

6 A. No.

7 Q. So Mr. Gillentine at that time never
8 told you -- never made an identification of
9 anybody in that yard as a suspect?

10 A. No.

11 Q. Okay. What authority did you have to
12 search that house looking for anybody much less
13 a key?

14 A. The -- I went to the Judge and got the
15 search warrant. I was looking for the money
16 that was taken from the robbery.

17 Q. And what -- what were the -- well,
18 where did you find the key?

19 A. It seems -- it seems, to the best of my
20 recollection, it was located in the front
21 bedroom on the north side of the house in the
22 closet.

23 Q. So the information you used to obtain
24 the search warrant was that a confidential
25 person that you didn't know had told a third

1 person that somebody -- that a suspect lived in
2 that house?

3 A. Correct.

4 Q. Now, how long -- what -- on what date
5 did you go to that house?

6 A. To the best of my knowledge, sir, I'm
7 thinking it was on the 13th.

8 Q. That would have been four days after
9 the robbery?

10 A. Correct.

11 Q. Now, on what date did you -- did
12 Mr. Gillentine call you and tell you he had
13 found that truck?

14 A. The same day.

15 Q. On the 13th. Who told him where to
16 look for the truck?

17 A. I have no idea, sir.

18 Q. Do you know or have any idea whether
19 that truck had been left there by the person
20 that had robbed the store or whether it had been
21 moved by somebody or whether it had been
22 tampered with in any way?

23 A. No, sir. I talked to some of the
24 neighbors there, and they said it was -- that he
25 had left it there.

1 Q. Who had left it there?

2 A. Mr. Hearn.

3 Q. Okay. They told you Hearn had left it
4 there?

5 A. Uh-huh (affirmative response).

6 Q. Who were those neighbors?

7 A. Sir, I can't -- I can't recall.

8 Q. Do you know whether or not those were
9 the same neighbors who may have been looking for
10 that \$1,000 reward?

11 A. No, I do not.

12 Q. Now, it was at this time that you
13 presented to or you showed to Mr. Gillentine
14 this driver's license photograph; is that
15 correct?

16 A. Correct.

17 Q. What was Mr. Gillentine's reaction
18 seeing the driver's license photograph?

19 A. Sir, to be honest with you, I can't
20 recall --

21 Q. So you --

22 A. -- his expression or action.

23 Q. Okay. So you don't remember whether he
24 identified the person on that driver's license
25 as being the person that robbed him?

1 A. No, sir, I don't.

2 Q. Now, I cannot put my hands on it,
3 unfortunately, right at this time, but I recall
4 that in Mr. Gillentine's statement he keeps --
5 he said repeatedly, one of them had a cornrow
6 hairstyle.

7 Do you recall that?

8 A. Yes, sir.

9 Q. And he identified the hairstyle as a
10 cornrow hairstyle?

11 A. Correct.

12 Q. Okay. But we know that when you saw
13 Mr. Hearn at the house, he had a shaved head,
14 right?

15 A. Correct.

16 Q. And we know that on his driver's
17 license photograph, he had dreadlocks?

18 A. Correct.

19 Q. Have you ever seen Mr. Hearn with a
20 cornrow hairstyle?

21 A. No, I have not.

22 Q. Okay. Have you ever seen a photograph
23 of Mr. Hearn with a cornrow hairstyle?

24 A. The only photograph I've seen is the
25 one you showed a minute ago, sir.

1 Q. Okay. And even though I'm not an
2 expert in hairstyles, I know the difference
3 between cornrows and dreadlocks --

4 A. Right.

5 Q. -- and I'm assuming that you do as
6 well.

7 A. I think I do, sir.

8 Q. All right. Is it true that cornrows
9 are where you braid your hair very close to your
10 head?

11 A. To the scalp.

12 Q. The hair is braided to the scalp;
13 whereas, dreadlocks, the hair is -- is matted --
14 I call it matted --

15 A. Yes, sir. It's sort of dangling down.

16 Q. -- matted together and -- matted
17 together and hangs down.

18 A. Yes, sir.

19 Q. Those are very distinctive looking
20 hairstyles.

21 A. Yes, sir.

22 Q. And one really is not confusable with
23 the other --

24 A. Correct.

25 Q. -- correct?

1 How long had you been in law enforcement in
2 2009 -- July of 2009?

3 A. I started law enforcement in May of
4 1996.

5 Q. All right. So four years or five
6 years?

7 A. It's been longer than that.

8 Q. I'm sorry. My math is bad. I'm not
9 going to do the math sitting here today.

10 You had been to the Academy, I'm assuming?

11 A. Correct.

12 Q. All right. Why did you not do a
13 photographic array lineup as -- as we all know
14 should have been done?

15 A. I'm going to be honest with you, sir,
16 just like I told Mr. Rob, that was ignorance on
17 my behalf.

18 Q. So you acknowledge the fact that the
19 best procedure would have been to take that
20 driver's license photograph and put it in with
21 other similar looking photographs and show
22 Mr. Gillentine all of the photographs at one
23 lick?

24 A. Correct, sir.

25 MR. DAVIS: Your Honor, may I have a

1 brief indulgence?

2 (SHORT PAUSE) .

3 MR. DAVIS: Your Honor, that's all I
4 have.

5 THE COURT: All right. Any re-direct?

6 MR. COLEMAN: Very briefly, Your Honor.

7 RE-DIRECT EXAMINATION

8 BY MR. COLEMAN:

9 Q. Deputy Payne, you were asked questions
10 about whether or not Mr. Gillentine had told you
11 that he recognized the defendant coming out of
12 the house. I know there's been some confusion
13 about that in reports or whatever.

14 Did you see the defendant that you
15 identified earlier in the courtroom there that
16 night?

17 A. You're talking about at the house?

18 Q. I'm sorry. In Verona at -- on Panel
19 Street.

20 A. Correct.

21 Q. Okay. You testified previously that
22 you -- when you saw him, what was your reaction?

23 A. It's -- he just -- he just had a funny
24 look on his face. I'll put it that way. You
25 know, sometimes you can just tell when somebody

1 is lying to you.

2 Q. And what did you think?

3 A. I kind of figured that was the guy I
4 was looking for.

5 Q. Okay. So it was actually you that --
6 when you drove up, you saw him outside or he
7 came out?

8 A. Correct.

9 Q. Okay. And as you stated -- and you
10 were asked questions on cross-examination about
11 your authority to be out there.

12 Were you out there to arrest everybody
13 there?

14 A. No.

15 Q. Okay. You were out there looking for
16 information?

17 A. Correct.

18 Q. And you were asking the individuals to
19 come outside, and you said specifically males.

20 A. Correct.

21 Q. Okay.

22 MR. COLEMAN: No additional questions,
23 Your Honor.

24 THE COURT: All right. You may step
25 down. Is he free to go?

MR. COLEMAN: Your Honor, I ask that he remain in the witness room, please.

(TESTIMONY CONCLUDED AT 10:30 A.M.)

THE COURT: All right. Who do you call next?

MR. COLEMAN: Your Honor, at this time, I call Agent Dale Stallings.

DALE STALLINGS,
having been first duly sworn by the Clerk, was examined and testified as follows:

MR. COLEMAN: Your Honor, I assume the rule is invoked. I told the witnesses to remain in the --

THE COURT: I thought you said you wanted them to remain in the courtroom.

MR. COLEMAN: Oh, I'm sorry.

THE COURT: My mistake. I'm sorry. Go ahead and swear him in.

THE CLERK: I swore him. You can take a seat on the witness stand.

MR. COLEMAN: Your Honor, before I ask permission to proceed, if I could show these to counsel opposite, it may make this a little faster.

MR. DAVIS: (Examining documents).

1 (SHORT PAUSE) .

2 MR. COLEMAN: May I proceed, Your
3 Honor?

4 THE COURT: (Nodded head
5 affirmatively) .

6 DIRECT EXAMINATION

7 BY MR. COLEMAN:

8 Q. State your name for the record,
9 please.

10 A. Dale Stallings.

11 Q. And, Mr. Stallings, what is your
12 present occupation or profession?

13 A. I'm a special agent with the Bureau of
14 Alcohol, Tobacco, Firearms and Explosives.

15 Q. And how long have you been so employed?

16 A. For approximately four-and-a-half
17 years.

18 Q. And what are your duties with ATF?

19 A. I primarily investigate violations of
20 Federal firearms loss.

21 Q. And you up until recently worked out of
22 the resident agency here in Oxford; did you not?

23 A. That's correct.

24 Q. And now you work out of the office in
25 Jackson?

1 A. Yes, sir.

2 Q. Now, back in June of 2009, you were
3 working out of the Oxford field office.

4 A. That's correct.

5 Q. And did you have the occasion to
6 investigate a robbery of a Federal fireman's
7 licensee in Nettleton, Mississippi?

8 A. I did.

9 Q. And what was the name of that -- that
10 business?

11 A. The Gold Exchange.

12 Q. And where did the crime occur?

13 A. In Nettleton, Mississippi.

14 Q. And are you familiar with the
15 jurisdictional boundaries of the Federal Courts
16 in the State of Mississippi?

17 A. I am.

18 Q. And, in fact, is Nettleton in the
19 Northern Judicial District of the State of
20 Mississippi?

21 A. It is.

22 Q. All right. The crime having occurred
23 on July 9th, 2009, when did you actually become
24 involved in this investigation, and how did you
25 become involved in the investigation?

1 A. The following Monday, my office
2 received a fax. Whenever a Federal firearm's
3 licensee has a loss of inventory due to theft or
4 just improper documentation, they have to fill
5 out a form called a Theft Loss Report, and that
6 form is then faxed to the resident office.

7 I received that fax the following Monday
8 after the robbery. I contacted Nettleton Police
9 Department to see if they needed any assistance
10 in the investigation, and they asked me to -- to
11 assist them.

12 Q. During the -- during the course of your
13 investigation, did you prepare what is referred
14 to as a photographic lineup or photographic
15 display to show the victims of this crime?

16 A. I did.

17 Q. Who were the victims? What were their
18 names?

19 A. Mark Burroughs and James Gillentine.

20 Q. Now, do you recall what date you
21 presented these photographic displays to
22 Mr. Gillentine and Mr. Burroughs?

23 A. I do. It was on July 20th, 2009.

24 Q. Approximately 11 days -- or 11 days
25 after the robbery, right?

1 A. Correct.

2 Q. All right. How many photos did you
3 display? And, if you would, describe the nature
4 and type of photos and how they were presented
5 to Mr. Gillentine and Mr. Burroughs.

6 A. I had two suspects, so I prepared a
7 photo lineup for each.

8 Q. Who were those suspects?

9 A. Ryan Hearn and Timothy Montgomery.
10 Each page had six photographs of -- of
11 individuals with similar characteristics in this
12 case, a young black male with a slender build.
13 They had similar hairstyles.

14 Q. Okay. Now, when you say, in this case,
15 you're referring to both of the suspects as
16 being young black males?

17 A. Correct.

18 Q. Okay. You did one photo array for
19 Mr. Hearn and a separate one for
20 Mr. Montgomery.

21 Were there --

22 A. Yes, sir.

23 Q. -- any differences in the photos you
24 chose for either of the two?

25 A. Yes.

1 Q. And what were they?

2 A. The photo lineup for Ryan Hearn had
3 individuals that had like characteristics as
4 him, and the photo lineup for Timothy Montgomery
5 had photos of individuals with similar
6 characteristics to him.

7 Q. Okay. Including differences in
8 hairstyle?

9 A. Correct.

10 Q. Okay. And approximately the same age?

11 A. Correct.

12 Q. Race?

13 A. Correct.

14 Q. They were all males?

15 A. Correct.

16 Q. And the facial features similar?

17 A. Correct.

18 Q. Where did you obtain the photos that
19 you used in these photo lineups?

20 A. Throughout our investigations, we end
21 up with driver's license photos of several
22 individuals that we come across, and we just
23 basically keep a log of each of these
24 individuals and use them in our lineups.

25 Q. So -- well, let me ask you this: Did

1 each of the photographs come from a database?

2 A. They were initially obtained from
3 the -- I guess it would be the Mississippi
4 Department of --

5 Q. Department of Public Safety?

6 A. Correct.

7 Q. Highway Patrol?

8 A. Correct.

9 Q. They are driver's license photos?

10 A. Yes. We always request driver's
11 licenses from the State of Mississippi.

12 Q. So each of the photos were driver's
13 license photos of these individuals; is that
14 correct?

15 A. That's correct.

16 Q. Including the photograph of Mr. Hearn?

17 A. Correct.

18 Q. Now, where were the photos displayed to
19 Mr. Gillentine and Mr. Burroughs?

20 A. I met them at their place of business
21 at the Gold Exchange and represented the lineups
22 of them there.

23 Q. Were they presented to them in a
24 non-suggestive manner?

25 A. They were. Prior to showing them the

1 lineups, I have a coversheet that I put on top
2 of the lineups. I explained to the two victims
3 that they needed to take their time, and if they
4 don't recognize an individual, they don't have
5 to pick somebody.

6 And that the -- the -- the case will not be
7 resolved solely on their lineup and that they
8 should feel no pressure.

9 Q. Now, in -- and did you actually read
10 those, what I'll refer to as, instructions to
11 them?

12 A. I did.

13 Q. Did they have an opportunity to read
14 them?

15 A. They did. They read it and signed and
16 dated it.

17 Q. Now, did you in any way influence or
18 suggest to either Mr. Gillentine or
19 Mr. Burroughs which photo to choose in dec- --
20 in deciding either of these defendants or either
21 page of the photo lineups?

22 A. No, I didn't. After I read the
23 coversheet to them, I took a step back and gave
24 them time to choose the photos.

25 Q. Was anyone else present when they were

1 reviewing these photos?

2 A. Not to my recollection.

3 Q. Did either Mr. Burroughs or
4 Mr. Gillentine select photos from either of the
5 groups of photos or photo displays as being the
6 individuals who committed this robbery?

7 A. They did.

8 Q. When they chose in particular the
9 photograph of Mr. Hearn -- when each of them
10 chose his, did you notice any hesitation or any
11 deliberation on their part?

12 A. There was absolutely no hesitation.
13 They immediately identified the photo.

14 Q. And how did they do that? How did each
15 one of them identify which photo in each spread
16 they chose?

17 A. They would either circle the photo or
18 the number associated with it and then initial
19 and date it.

20 Q. Now, do you recall whose photos were
21 marked by Mr. Gillentine?

22 A. Yes. He marked Ryan Hearn's photo and
23 Timothy Montgomery's photo.

24 Q. And Mr. Burroughs, also?

25 A. The same.

1 Q. Did either of them select a photograph
2 of any individual who was later learned not to
3 be involved in this robbery?

4 A. No.

5 Q. Agent Stallings, I want to present to
6 you what has been marked as Government's Exhibit
7 Number 2.

8 Do you see it has the ATF letterhead at the
9 top; does it not?

10 A. (Examining document). It does.

11 Q. And then what does this -- what does
12 this document say?

13 A. This is the --

14 Q. Well, let me ask you this: Do you
15 recognize this document?

16 A. I do.

17 Q. And, actually, this is a composite
18 exhibit. It's initially got the front page and
19 the second page.

20 Can you -- do you see the second page of the
21 exhibit?

22 A. (Examining document). I do.

23 Q. All right. And then the third page of
24 the composite exhibit. Now, you've already
25 described the first page to us.

1 These are the instructions you testified to
2 previously, correct?

3 A. That's correct.

4 Q. And how do you recognize that
5 instructional page and also the second page,
6 being Page Number 2 of the composite exhibit of
7 the six individual photographs, and then the
8 third page, which I will show you again, as
9 being six individual photographs of other
10 individuals? How do you recognize this
11 composite exhibit?

12 A. I put it together. And then it also
13 has my name as a witness, and I dated it as
14 well.

15 Q. This is your name on the bottom
16 signature line?

17 A. That's correct.

18 Q. And what is the date on that?

19 A. July 20th, 2009.

20 MR. COLEMAN: Your Honor, at this time,
21 the Government will move to introduce
22 Government's Composite Exhibit Number 2 into
23 evidence as an exhibit to the witness's
24 testimony.

25 THE COURT: Any objection?

1 MR. DAVIS: No, sir.

2 THE COURT: Let it be entered.

3 (WHEREUPON, THE ABOVE-MENTIONED
4 DOCUMENT WAS MARKED AS EXHIBIT NO. 2 TO THE
5 TESTIMONY OF THE WITNESS AND RETAINED BY THE
6 COURT.)

7 BY MR. COLEMAN:

8 Q. Okay. So in Government's Composite
9 Exhibit Number 2 there are four questions, and I
10 think you --

11 THE COURT: Move on. We've been over
12 that.

13 BY MR. COLEMAN:

14 Q. On the second page of the Government's
15 composite exhibit, there is an individual whose
16 photograph is circled.

17 Do you know who that is?

18 A. (Examining document). That's Ryan
19 Hearn.

20 Q. And this, in fact, is the composite
21 exhibit that contained the photographs that were
22 presented to whom?

23 A. James Gillentine.

24 Q. And then at the bottom of the
25 photograph, the top right-hand corner, Page 2 of

1 the composite exhibit, the photograph being
2 circled has initials and a date.

3 Do you know whose initials those are?

4 A. (Examining document). Those are James
5 Gillentine's initials.

6 Q. Do you know who circled that
7 photograph?

8 A. James Gillentine.

9 Q. Were you present when he did that?

10 A. I was.

11 Q. Okay. And he also dated it?

12 A. That's correct.

13 Q. And then the second page, being other
14 photos you presented to him, did you also
15 witness him circle and put his initials under
16 that photograph?

17 A. I did.

18 Q. And who is that?

19 A. James Gillentine.

20 Q. I'm sorry.

21 A. James Gillentine.

22 Q. Okay. The initials are James
23 Gillentine's?

24 A. Correct.

25 Q. Okay. Whose photograph did he circle?

1 A. Timothy Montgomery.

2 Q. And now I show you what's been marked
3 as Government's Exhibit Number 3.

4 THE COURT: Is there any objection to
5 this exhibit?

6 MR. DAVIS: No, sir.

7 THE COURT: Let it be entered.

8 MR. COLEMAN: Thank you, Your Honor.

9 (WHEREUPON, THE ABOVE-MENTIONED
10 DOCUMENT WAS MARKED AS EXHIBIT NO. 3 TO THE
11 TESTIMONY OF THE WITNESS AND IS ATTACHED
12 HERETO.)

13 BY MR. COLEMAN:

14 Q. All right. This having been received
15 into evidence, do you recognize Government's
16 Composite Exhibit Number 3?

17 A. (Examining document). I do.

18 Q. And it consists of three pages. The
19 first page of which is on the screen in front of
20 you.

21 Again, that's the instructional page; is it
22 not?

23 A. Correct.

24 Q. And is it signed by either of the
25 individuals who reviewed these photographs?

1 A. It is.

2 Q. And who?

3 A. Mark Burroughs.

4 Q. All right. And what date did
5 Mr. Burroughs sign this?

6 A. July 20th, 2009.

7 Q. And did you sign as a witness?

8 A. I did.

9 Q. On the second page of the Government's
10 Composite Exhibit Number 3, again, six
11 photographs.

12 Were you present to see Mr. Mark Burroughs
13 circle the photograph in the top right-hand
14 corner?

15 A. I was.

16 Q. And did he, in fact, initial and date
17 that photograph?

18 A. He did.

19 Q. And whose paragraph is that?

20 A. Ryan Hearn.

21 Q. Now, is that the driver's license photo
22 of Mr. Ryan Hearn?

23 A. It is.

24 Q. Is that the same photograph that
25 appears to be on the driver's license that was

1 seized out of the Ford Escape?

2 A. It is.

3 Q. Now we're reading Page 3 of
4 Government's Composite Exhibit Number 3.

5 And I will ask you again: Were you present
6 when the photograph on the bottom -- excuse me
7 -- bottom middle photograph was marked?

8 A. (Examining document). Yes.

9 Q. And who marked that photograph?

10 A. Mark Burroughs.

11 Q. And, in fact, his initials are under
12 the photograph.

13 A. Correct.

14 Q. And did he circle the Number 5?

15 A. He did.

16 Q. And he dated it?

17 A. He did.

18 Q. After July 20th, 2009, after you had
19 presented these photographic displays to both
20 Mr. Gillentine and Mr. Burroughs, did it come to
21 your attention that Mr. Burroughs and
22 Mr. Gillentine might have been shown an
23 individual photograph of both the individuals
24 identified in these photo spreads?

25 A. It did.

1 Q. How did that come to your attention?

2 A. When I presented both Mr. Burroughs and
3 Mr. Gillentine with the lineups, I thought it
4 was usual how quickly they were able to identify
5 the photos.

6 After leaving the Gold Exchange, I contacted
7 Ricky Payne and asked him if --

8 Q. And he was the police chief in
9 Nettleton.

10 A. Correct. I asked him if Mr. Burroughs
11 and Mr. Gillentine had been shown individual
12 photos, and he acknowledged that he had done so.

13 Q. During the course of your
14 investigation, did you determine which photo of
15 Mr. Hearn had been showed -- shown do
16 Mr. Gillentine and Mr. Burroughs?

17 A. I did. I determined that Ricky Payne
18 had shown them a -- actually shown them
19 Mr. Hearn's driver's license.

20 MR. COLEMAN: I tender the witness,
21 Your Honor.

22 THE COURT: Let me ask one question
23 before you proceed.

24 Officer, when you showed Mr. Gillentine
25 and Mr. Burroughs the photo lineup, did you show

1 it to them separately, or were they in each
2 other's presence?

3 THE WITNESS: They were in each other's
4 presence.

5 MR. COLEMAN: Based on your question,
6 may I follow up, Your Honor?

7 THE COURT: (Nodded head
8 affirmatively).

9 BY MR. COLEMAN:

10 Q. If you would, elaborate on that as far
11 as just the circumstances of them.

12 I know they were in the same room, but how
13 did it transpire, please?

14 A. Well --

15 MR. COLEMAN: If the Court will allow
16 it.

17 THE COURT: That will be fine.

18 A. They -- we were in the Gold Exchange,
19 and there is a long glass display case that they
20 were standing on one side of, and I was on the
21 other.

22 I had placed the lineups for each individual
23 on the -- on top of the glass case, and I had
24 separated them. But when I stepped back to
25 allow them to -- to view the -- the lineups

1 themselves, they scooted right back up next to
2 each other.

3 MR. COLEMAN: May I ask another
4 question, Your Honor?

5 THE COURT: (Nodded head
6 affirmatively).

7 BY MR. COLEMAN:

8 Q. Did they appear to be communicating
9 with one another or discussing which photograph
10 to choose?

11 A. (No response).

12 Q. You testified earlier that there was no
13 hesitation.

14 A. Correct.

15 Q. So describe that -- what you meant, if
16 you will.

17 A. While they were looking at the
18 photographs, they didn't discuss with each
19 other -- you know, they didn't say, is this guy
20 it, or, is that guy it? They did their
21 selections, and after their selections and after
22 I took the photo lineups back, they then
23 discussed it.

24 Q. It wasn't until after they had both
25 marked the photos that they discussed who they

1 had marked or which photograph --

2 A. Correct.

3 Q. -- is that correct?

4 A. That's correct.

5 MR. COLEMAN: Thank you, Your Honor.

6 THE COURT: Mr. Davis.

7 MR. DAVIS: May I proceed, Your Honor?

8 THE COURT: Uh-huh (affirmative
9 response).

10 CROSS EXAMINATION

11 BY MR. DAVIS:

12 Q. Good morning, Agent Stallings.

13 A. Good morning.

14 Q. My name is Chip Davis. I represent
15 Ryan Hearn.

16 Agent Stallings, I'm looking at Government's
17 Exhibits 2 and 3, and I notice that both are
18 dated January 20th, 2009; is that correct?

19 A. July 20th, 2009.

20 Q. July 20th, 2009. And I'm also -- you
21 were in the courtroom when Mr. -- when Deputy
22 Payne testified; is that correct?

23 A. That's correct.

24 Q. You heard Deputy Payne testify that he
25 showed Mr. Burroughs and Mr. Gillentine the

1 driver's license photograph on July 13th; is
2 that correct?

3 A. That's correct.

4 Q. Approximately seven days prior to this
5 photo lineup.

6 A. Correct.

7 Q. Okay. And this is the photograph that
8 was shown to them prior to the lineup, correct?

9 A. Correct.

10 Q. And that's the exact same photograph
11 that they identified in the spread.

12 A. Correct.

13 Q. All right. Now, did -- were you also
14 present when Deputy Payne made the comment that
15 Mr. Hearn had a funny -- funny look on his face
16 and he just knew that was his man or something
17 to that effect?

18 A. Yes, sir.

19 Q. Okay. And he just knew that was his
20 man earlier in the same day as to when he was
21 presenting the driver's license picture to
22 Mr. Burroughs and Mr. Hearn (sic); is that
23 correct?

24 A. That's correct.

25 Q. Okay. And you would acknowledge that

1 that situation is simply rife with sub- --
2 subjectivity or, in other words, suggestiveness
3 as to who robbed the store.

4 A. Well, I can't speak for Mr. Payne's
5 motives or what he did, but what other evidence
6 they had before then, I don't know.

7 Q. You would not have done it that way.

8 A. No, I would not have.

9 Q. And you acknowledge that it's improper
10 police procedure to do it that way.

11 A. In my opinion, it is.

12 Q. Now, you testified that you were
13 surprised as to the speed with which
14 Mr. Burroughs and Mr. Gillentine picked out
15 Mr. Hearn's photograph, correct?

16 A. Correct.

17 Q. And you were so surprised, in fact, you
18 called Deputy Payne -- or at that time Chief
19 Payne and said, hey, Chief Payne, something is
20 going on, correct?

21 A. Correct.

22 Q. All right. When the two men scooted
23 close back together -- you had obviously
24 separated them for a reason; is that correct?

25 A. That's correct.

1 Q. And the reason is, is so they wouldn't
2 see which photograph the other one was
3 circling --

4 A. Uh-huh (affirmative response).

5 Q. -- which is proper procedure?

6 A. Correct.

7 Q. When they scooted back together, one
8 could see which photograph the other was
9 circling.

10 A. If they had looked.

11 Q. If they had looked. All right. Now, I
12 wonder -- had you been in communication with
13 Deputy Payne prior to presenting this
14 photographic lineup to Mr. -- Mr. Gillentine and
15 Mr. Burroughs?

16 A. Very briefly.

17 Q. All right. Why didn't he tell you that
18 they had already identified the guy's picture?

19 A. I don't know. I can't speak for him.

20 Q. All right. But he didn't give you that
21 piece of information, did he?

22 A. No, he didn't.

23 MR. DAVIS: Your Honor, that's all I
24 have.

25 THE COURT: All right. Any re-direct?

1 MR. COLEMAN: Very, very brief, Your
2 Honor.

3 RE-DIRECT EXAMINATION

4 BY MR. COLEMAN:

5 Q. Agent Stallings, when you showed the
6 display to Mr. Gillentine and Mr. Burroughs, did
7 you ask them if they had been shown a photo of
8 the -- any of the suspects?

9 A. I didn't.

10 Q. Okay. You didn't have any idea they
11 had been shown so you -- there was really no
12 reason --

13 A. That's correct.

14 Q. Okay. You thought you were coming in
15 fresh with a photo display?

16 A. That's right.

17 Q. Okay.

18 MR. COLEMAN: Thank you.

19 THE COURT: You may step down.

20 (TESTIMONY CONCLUDED AT 10:50 A.M.)

21 THE COURT: Who do you want to call
22 next?

23 MR. COLEMAN: Your Honor, the
24 Government calls Mr. Mark Burroughs.

25 THE COURT: All right. Bring in

Mr. Burroughs.

(SHORT PAUSE) .

MARK BURROUGHS,

having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COLEMAN:

Q. Could you state your name for the record, please.

A. Mark Burroughs.

Q. Mr. Burroughs, have you ever testified in Federal Court before?

A. No, sir.

Q. All right. Well, you're not nervous?

A. No.

Q. Okay. Good. Where do you live, Mr. Burroughs?

A. Nettleton, Mississippi.

Q. And what is your present occupation?

A. I own a pawn shop in Nettleton.

Q. All right. And the -- a pawn shop by the name of?

A. The Gold Exchange.

Q. The Gold Exchange?

A. Yes, sir.

1 Q. And you're the owner of it now?

2 A. Yes, sir. Now, yes, sir.

3 Q. All right. Now, back in July -- in
4 particular July 9th, 2009, you weren't the owner
5 of the Gold Exchange at that time, were you?

6 A. I just worked there.

7 Q. Okay. I believe it was owned by your
8 present wife; is that correct?

9 A. My wife and her partner, yes.

10 Q. Okay. And your wife's name?

11 A. Angela Burroughs.

12 Q. Okay. At the time -- I'm sorry. Back
13 in 2009 before you married, she was Angela --

14 A. Galbreath.

15 Q. Okay. And her partner??

16 A. Barb Christianson.

17 Q. All right. And they were the persons
18 who held the Federal Firearms' license,
19 correct?

20 A. Yes, sir.

21 Q. Okay. So in July of 2009, you were
22 working as an employee of the store, which was a
23 Federal Firearms' licensee and business who was
24 selling firearms and pawning items; is that
25 correct?

1 A. Yes, sir.

2 Q. Now, are you related to Mr. James
3 Gillentine?

4 A. I'm his son-in-law.

5 Q. Okay. His daughter is one of the
6 ladies you just mentioned.

7 A. That's right.

8 Q. Okay. Who is now your wife.

9 Now, back on July 9th, 2009, were you there
10 at the business with someone?

11 A. Yeah, with my father-in-law, Mr. James.

12 Q. Okay. Now, I understand the way this
13 business is set up, you had two offices in a
14 building; is that correct?

15 A. That's right, yes, sir.

16 Q. One office for --

17 A. The car lot -- we had G&G Auto
18 Exchange, and the other business is the pawn
19 shop.

20 Q. You worked the pawn shop side and --

21 A. I worked them both.

22 Q. You worked -- okay.

23 A. Yeah, whatever needed to be done.

24 Q. All right. So that morning, you were
25 in one of the offices with Mr. Gillentine; is

1 that correct?

2 A. We were in the car lot office, yes,
3 sir.

4 Q. Okay. And what, if anything, usual
5 happened while y'all were there?

6 A. Well, we were sitting there, and this
7 little SUV, little Ford Escape, charcoal color,
8 pulls up kind of over in front of the pawn
9 shop. I looked around and thought it was my
10 nephew because he's got one that color.

11 I looked around and said, well, that's not
12 Logan, so they backed -- they weren't there. In
13 no time, they backed out and left, and I said,
14 well, okay. So I was just sitting there, and
15 we're sitting on a big picture window.

16 Q. What kind of vehicle did you --

17 A. It was a Ford Escape.

18 Q. I'm sorry.

19 A. A Ford Escape.

20 Q. And that's what your nephew had?

21 A. Yes, sir.

22 Q. Okay. So did you --

23 A. That's why I thought it was him, you
24 know.

25 Q. Okay.

1 A. But, anyway, they backed out and left,
2 and I said, well, okay, you know. It wasn't a
3 couple, three minutes that they come back and
4 pulled right up in front of the picture window.

5 And, of course, I'm sitting on a -- on the
6 sofa -- on the arm of the sofa just facing the
7 window. My daddy-in-law was sitting in the
8 recliner right by the window, and, you know,
9 that's -- that's when they got out.

10 Q. Okay. Now, when a vehicle pulls in in
11 front of the business --

12 A. Yes, sir.

13 Q. -- how close would the individuals --
14 when they step out of the vehicle, how close
15 would they be to you?

16 A. From here to that rail right there in
17 front of you. Well, they're closer than that.

18 Q. Approximately 5 or 6 feet?

19 A. Just stand right there. I would say
20 about right there.

21 Q. Okay.

22 MR. COLEMAN: Your Honor, I would ask
23 the record to reflect the witness has described
24 approximately 6 feet --

25 THE COURT: Okay.

1 MR. COLEMAN: -- from the store
2 window --

3 BY MR. COLEMAN:

4 Q. Did the car pull right up to the
5 sidewalk --

6 A. Right up --

7 Q. -- of the business; is that --

8 A. It pulled right up to the front of the
9 business.

10 Q. Okay. So the vehicle pulls in, and
11 what happens?

12 A. Well, the driver gets out, and I look
13 at him. I just kind of noticed he had -- it was
14 the dreadlock look hair that kind of got my
15 attention. He had on a shirt, and I was just
16 watching him go up. Then the passenger was
17 getting out, and I said --

18 Q. Let me get you to follow up real quick.
19 You said the dreadlock look.

20 Do you know the difference in cornrow and
21 dreadlock?

22 A. I don't.

23 Q. Does that mean anything to you?

24 A. I don't.

25 Q. Okay. What is a dreadlock hairstyle to

1 you?

2 A. It looked like it was just a -- it was
3 just like a -- it looked like it was that big
4 round of hair, and it just comes out, you know
5 -- (witness demonstrating).

6 Q. Okay. Is that something you -- is that
7 common in Nettleton?

8 A. Uh-uh (negative response).

9 Q. Was it common for your customers who
10 came into your store to have --

11 A. No, sir.

12 Q. -- that hairstyle?

13 A. That was a rarity to me. That's why it
14 kind of caught my attention, you know.

15 Q. Okay.

16 A. When he gets out and walks around, I'm
17 just staring at him, and I said, well, let me
18 see what these guys need.

19 Q. All right. What about the other -- the
20 passenger in the vehicle?

21 A. Well, he -- I wasn't staring right dead
22 on him. I was looking more at the driver. When
23 he got out and walked passed -- the passenger
24 got out, he was kind of behind him and shut the
25 door and I just -- I looked at him, but I was

1 staring more at the driver. You know, he just
2 -- like I said, he just got my attention.

3 Q. Okay. Are you still sitting there just
4 looking out this -- this window?

5 A. Yeah, they were walking by, and I said,
6 well, let me go see what they're doing, when
7 they went by the window.

8 Q. All right. Would they have known you
9 were sitting there looking at them?

10 A. No, uh-uh (negative response).

11 Q. Why not?

12 A. It was -- it's kind of weird. The way
13 that it's shaded -- they had blinds, but they
14 were like this. (Witness demonstrating). Do
15 you know what I'm saying?

16 Q. Okay. Was the window tinted?

17 A. Well, it's just kind of in that shaded
18 area. You can't really see in, but in the
19 daytime when the sun hits it, you can see in.
20 So I'm going to say it was just a shaded --

21 Q. Okay.

22 A. -- shaded part of the morning.

23 Q. All right. So you say you're sitting
24 there, and you see them walking towards the pawn
25 shop?

1 A. Yeah, uh-huh (affirmative response).

2 Q. What are you doing?

3 A. I'm just sitting there talking to my
4 daddy-in-law.

5 Q. Did you have any paperwork with you?

6 A. Well, I was holding onto a car lot
7 file. I was sitting there holding it so I could
8 remember to write it down.

9 Q. Okay.

10 A. You know, I said, well, let me see what
11 they're doing, so I get up. Between the car lot
12 office and the pawn shop, there's a little
13 kitchen. You have to walk through the kitchen
14 to get into the pawn shop.

15 Okay. So I just walked through there, and I
16 laid my file down on the glass and I started
17 working on it. I heard the door open. It had a
18 little ding there and it just -- and I said,
19 hey, fellows, what's going on, and that was it.

20 Q. Okay. All right. You had paperwork.
21 Were you looking down?

22 A. Yeah, uh-huh (affirmative response)?

23 Q. All right. You heard the bell?

24 A. Yeah.

25 Q. You actually spoke and --

1 A. Yeah, I just said -- I was like this,
2 hey, fellows, what's going on? (Witness
3 indicating).

4 Q. And what do you next remember?

5 A. Waking up.

6 Q. Okay.

7 A. I remember --

8 Q. Do you know -- do you know who hit you?

9 A. Do I know who hit me?

10 Q. Yeah, did you see who hit you?

11 A. I did not see who hit me, no, sir, I
12 didn't.

13 Q. All right. Where were you hit?

14 A. Where was I hit?

15 Q. Yes, sir.

16 A. On the right side right here. (Witness
17 indicating). I had my head down, and from what
18 happened -- as it looked, they hit me right here
19 because I had my head down. They broke my
20 nose. I had to have stitches put over my eye,
21 and they knocked my orbit (phonetic) loose in my
22 eye. It's my eyeball, actually.

23 I don't know what that is, but they said
24 they knocked it loose. I went to the eye doctor
25 and he looked at it, and he said it was one of

1 those fence straddling deals. He said, I
2 wouldn't do surgery. Let's see what's going to
3 happen. He said, we're trying not to do surgery
4 on it.

5 Q. Okay. But, I mean, I -- you were out?

6 A. Yeah.

7 Q. Did it knock you out?

8 A. Yeah.

9 Q. Did you go to the floor?

10 A. Oh, yeah.

11 Q. Okay. Where did you fall?

12 A. If I was standing here, we have a
13 filing cabinet right behind me in a little bitty
14 concave, a little spot right there, with some
15 drawers, and I fell between them. It wasn't
16 real wide. How I got between them, I don't
17 know, but, I mean, that's where I fell.

18 Q. Okay. When you came to, what do you
19 remember?

20 A. The first thing I remember when I woke
21 up was the door -- the drawer was open right
22 over my head. That thing never stays open, and
23 it was open when I got up.

24 Q. What did you keep in the drawer?

25 A. We've got money in it.

1 Q. Okay. The drawer was open, and what
2 else?

3 A. Well, I got up, and I was looking
4 around. And, like I said, I was hollering for
5 James, my father-in-law. I went back in through
6 the kitchen to the -- to the car lot where he
7 was sitting, and I couldn't find him.

8 Okay. I was like, he don't know where
9 anybody is at, so I go back into the pawn shop
10 and I'm just standing there kind of thinking,
11 what in the world?

12 I kept seeing blood on the floor, and
13 finally I realized it was mine. It kind of got
14 me like, okay. Here we are, you know. I was
15 just standing there trying to compose myself, I
16 guess you would say, when he come running
17 through the door. My daddy-in-law come running
18 through the front door.

19 Q. What did he say?

20 A. He was hollering, my gun. My gun.
21 And, me, I remember this because I was standing
22 there propped up. He said, my gun. My gun, and
23 I said, that's right. He said, give me my gun,
24 and I said, oh, okay.

25 You know, I was still out of gear there for

1 a minute. So I went over and grabbed the gun
2 and handed it to him, and he runs out of the
3 door. And I'm still like, what's going on, you
4 know.

5 Q. Did you hear -- okay. After you gave
6 him the pistol, did you hear shots fired?

7 A. I did.

8 Q. And then did some other people
9 arrive --

10 A. Yeah, the --

11 Q. -- shortly after?

12 A. -- law enforcement showed up. The
13 ambulance showed up. TV4 showed up. I don't
14 know how they got there that quick, but they
15 showed up. I think TV9. You know, it was just
16 packed in there for a minute, and I couldn't
17 figure it out. But, yeah, there was some people
18 coming on up there shortly after.

19 Q. All right. On a later date, do you
20 remember Chief Ricky Payne bringing a driver's
21 license or a driver's license with a photo to
22 you and showing it to you?

23 A. Yes, sir.

24 Q. Do you remember what date that was?

25 A. It was a few days after it happened.

1 I'm trying to think of the date.

2 Q. Just a few -- within a week?

3 A. Yeah, yeah, it was within -- less than
4 a week, sure, yes.

5 Q. Let me show you what's been marked
6 Government's Exhibit Number 1.

7 Can you see that --

8 A. (Examining document). Yeah.

9 Q. -- on the screen in front of you?

10 A. Yes, sir.

11 Q. All right. What is that?

12 A. That's a Mississippi driver's license.

13 Q. Okay. Can you see the photograph well
14 enough to --

15 A. Yes, sir.

16 Q. -- to testify as to whether or not this
17 is, in fact, a photocopy of the driver's license
18 that was shown to you by Officer Payne?

19 A. Yes, sir, that's it.

20 Q. When he showed you that photograph, did
21 you recognize the person in the photograph?

22 A. Oh, yeah.

23 Q. How did you recognize him; from what
24 circumstance?

25 A. Well, just the way he looked from the

1 hair. That got me right off the bat. I said,
2 that's him. I said, I know that's him.

3 Q. Anything other than his hair?

4 A. I mean, just the hair and just, you
5 know -- I mean, like I said, when he walked in
6 front of the picture window, I was just staring
7 at him like, my goodness, so I -- it just caught
8 my eye. I remembered him.

9 Q. Did you have an opportunity to see that
10 he was a black male?

11 A. Oh, yeah.

12 Q. Okay.

13 A. Yeah.

14 Q. And facial features, did you notice
15 anything?

16 A. Not really, no, sir.

17 Q. But you recognize the person in the
18 photograph as the person who came up to the
19 store in the Ford Escape and walking passed the
20 window the --

21 A. That's right, yes, sir.

22 Q. -- the morning that this occurred?

23 A. Yes, sir.

24 MR. COLEMAN: The Court's indulgence
25 for one moment.

1 (SHORT PAUSE).

2 BY MR. COLEMAN:

3 Q. Now, approximately 11 days after the
4 robbery -- seven days -- about a week after you
5 had been shown the photo by -- by Chief Payne on
6 July 20th, 2009, do you recall being shown a
7 group of photographs by Agent Dale Stallings?

8 A. Yes, sir.

9 Q. Who was -- well, let me ask you this:
10 Where were you, at the Gold Exchange?

11 A. Yes, sir.

12 Q. And you were there with Mr. Gillentine
13 --

14 A. Yes, sir.

15 Q. -- just the two of you and
16 Mr. Stallings -- Agent Stallings; is that
17 correct?

18 A. Yes, sir.

19 Q. On the screen in front of you, I want
20 to show you what's been marked as Government's
21 Exhibit Number 3. It is a composite exhibit
22 consisting of three pages.

23 Do you recognize that first page?

24 A. (Examining document). Yes, sir, I do.

25 Q. How do you recognize that?

1 A. Well, it's got my signature on it, and
2 I dated it the day that I saw it. I was asked
3 to look at that and read it over before he
4 showed me some pictures.

5 Q. Okay. And was it read to you, or did
6 you read it yourself?

7 A. I read it myself, yes, sir.

8 Q. On the second page of that composite,
9 there is a series of six photographs. The top
10 right-hand photograph has been circled.

11 Do you know who circled that photograph?

12 A. (Examining document). I did.

13 Q. How do you know that?

14 A. Because he asked me to pick out the man
15 that I saw getting out of the car that day, and
16 I -- I said, that's him right there, and I
17 circled it and put my initials on it and dated
18 it.

19 Q. Did you hesitate any?

20 A. No. I didn't have to.

21 Q. Now, I understand this was after you
22 had been shown what I previously showed you as
23 Government's Exhibit Number 1, the driver's
24 license by Deputy Payne.

25 A. Okay.

1 Q. Was your identification of Mr. Hearn on
2 July 20th based on your -- on what you remember
3 seeing the date of the robbery?

4 A. Yes.

5 Q. As was your identification of him from
6 the driver's license that was shown to you
7 previously; is that correct?

8 A. Right.

9 Q. The third page of Government's Exhibit
10 Number 3 is another set of photos.

11 Did you also mark that photograph?

12 A. (Examining document). Yes, sir, I did.

13 Q. And you marked that as being the person
14 that you also identified from being at the Gold
15 Exchange the date of the robbery?

16 A. Yes, sir. I circled it and initialed
17 it and dated it, yes, sir.

18 Q. Thank you. When you chose the photos
19 of both individuals as the ones being there on
20 the date of the robbery, did Agent Stallings or
21 anyone else suggest to you or in any way
22 indicate you should circle a particular
23 photograph?

24 A. No, sir. No, sir.

25 Q. So based on your memory of the events

1 of that day and seeing the individuals who came
2 in the store and committed this robbery, was
3 that what you used in selecting these
4 photographs?

5 A. That's right.

6 Q. Now, I just showed you the photographs
7 of two individuals. One in particular that you
8 said you identified was a photograph of Ryan
9 Hearn.

10 Do you -- if you looked around the
11 courtroom, have you seen an individual that you
12 would identify as Ryan Hearn here in the
13 courtroom today?

14 A. Yes, sir.

15 Q. Okay. Where is he seated?

16 A. He's sitting right over there.

17 (Witness indicating).

18 Q. And you're pointing to --

19 A. The man in the orange shirt.

20 Q. The man in the orange shirt?

21 A. Orange suit.

22 Q. Orange suit, okay.

23 MR. COLEMAN: Your Honor, I would ask
24 the record to reflect the witness has identified
25 the defendant.

1 THE COURT: That's fine.

2 BY MR. COLEMAN:

3 Q. When you selected Mr. Hearn's
4 photograph, Government's Exhibit -- Composite
5 Exhibit Number 3, Page 2, referred to previously
6 that had your initials and the date, did you
7 base your identification of him on the
8 opportunity you had to review him on the date
9 this crime occurred?

10 A. Yes.

11 Q. And what degree of attention were you
12 giving him on the date that this occurred?

13 A. On a scale from 1 to 10, probably a 9
14 because, like I said, the hairdo just wasn't
15 something commonly you would see running around
16 town, you know.

17 It just caught me because of the fact they
18 pulled up and backed out. You know, I'm like,
19 what -- what's going on, you know, and then they
20 come back. I go, huh, did you -- and he's
21 walking a little fast. You know, I was looking
22 at him. I was like, okay. What's up here? So,
23 yeah, I'm going to say that done it.

24 Q. And as you testified previously, there
25 was no hesitation.

1 When Agent Stallings showed you these
2 photographs, you did not hesitate?

3 A. Oh, no. I didn't have to, no, sir.

4 Q. I'm sorry.

5 A. I didn't have to hesitate, no, sir.

6 Q. Okay.

7 MR. COLEMAN: The Court's indulgence
8 one moment, Your Honor.

9 (SHORT PAUSE).

10 MR. COLEMAN: We tender the witness,
11 Your Honor.

12 THE COURT: All right. Any cross?

13 MR. DAVIS: May I proceed, Your Honor?

14 THE COURT: You may.

15 CROSS EXAMINATION

16 BY MR. DAVIS:

17 Q. Good morning, Mr. Burroughs.

18 A. Hey, how you doing?

19 Q. I'm doing well. My name is Chip
20 Davis. I represent Mr. Hearn.

21 A. All right.

22 Q. Mr. Burroughs, when you were first
23 sworn in to testify, you testified that the
24 individuals who robbed you pulled up in a
25 charcoal colored Ford Escape.

1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes, sir.

4 Q. And you were able to get a clear and
5 good look at that Ford Escape?

6 A. Yes, sir.

7 Q. All right. Now, you also testified
8 that your father-in-law came in afterwards and
9 asked for his gun.

10 A. That's right.

11 Q. All right. What type of gun was it?

12 A. I believe it was a 45.

13 Q. All right. A revolver or automatic?

14 A. It's an automatic.

15 Q. All right. How -- do you recall how
16 many bullets it had?

17 A. I have no idea.

18 Q. Okay. Do you recall hearing your
19 father-in-law fire shots after that vehicle?

20 A. I did.

21 Q. Is your father-in-law a pretty good
22 shot?

23 A. I guess. I don't know.

24 Q. Do you recall hearing your father-in-
25 law tell the police or hearing your father-in-

1 law tell anybody else that he had hit that
2 vehicle several times and that the vehicle
3 should have bullet holes in it?

4 A. I don't remember that.

5 Q. All right. Do you recall either
6 yourself or your father-in-law -- and I can't
7 put my hands on the statement right now.

8 But do you recall either yourself or your
9 father-in-law giving a statement identifying the
10 individual who struck you as having a cornrow
11 hairstyle? Do you recall that?

12 A. I don't know who hit me.

13 Q. You don't know who hit you?

14 A. No, sir. I didn't see the man who hit
15 me.

16 Q. All right. I thought you were giving
17 him a 9 on a 9 to 10 scale.

18 A. On a 9 to 10 -- of him coming from my
19 picture window, that's where I saw him.

20 Q. Well, you knew he was about to come in
21 the store, didn't you?

22 A. Sir?

23 Q. You knew he was about to come into the
24 store.

25 A. Yes, sir. Yes, sir.

1 Q. Okay. And if you were this concerned
2 and if you were giving him that level of
3 attention, what took your attention off of him?

4 A. Well, when I just walked in -- when I
5 walked in with that file, I just laid it down,
6 and I started working. I've done it many of
7 times when people come in. You know, when I'm
8 working on a file, people walk in, and so that's
9 just what I done.

10 Q. Okay. So your testimony today then is
11 that you saw an individual cross in front of
12 your picture window, and that individual was so
13 unusual and that individual was so unique and it
14 caused you so much concern that you were giving
15 him a 9 level of attention on a 10 scale.

16 You were paying attention to him and what's
17 going on here, and then as he was coming, you
18 then start working and looking down and not
19 paying attention.

20 Is that your -- is that your testimony?

21 A. Yeah, when I walked in, I just laid the
22 file down and started working.

23 Q. You didn't think it would be useful to
24 continue giving that individual your attention?

25 A. I was just -- he was just a unique-

1 looking person with a hairdo. I mean, I had no
2 idea to think that he was going to do anything,
3 period.

4 Q. Okay.

5 A. It was just the hairdo that caught my
6 attention.

7 Q. And, I believe, you also testified, did
8 you not, that you primarily identified the
9 photograph based upon the cornrow -- or based
10 upon the dreadlock style hair?

11 A. Okay. Yes, sir.

12 Q. Okay. And, I believe, your testimony
13 was that you noticed primarily the hair and did
14 not notice any facial features.

15 A. Okay.

16 Q. No, sir. Was that your testimony?

17 A. Oh, okay, yeah.

18 Q. Now, Mr. Burroughs, when -- do you
19 recall Agent Stallings coming to your place of
20 business and presenting you with the two -- or
21 presenting you and your father-in-law with the
22 two photographic lineups?

23 A. Yes, sir.

24 Q. All right. And tell -- tell the Court,
25 if you would, did Agent Stallings -- did he just

1 hand them to you? Did he hand them to you and
2 give you specific instructions? Did he hand you
3 one and tell you to go in an office? What
4 happened?

5 A. When he walked in, he handed me the
6 paperwork and told me to read that over before I
7 look at some pictures. He said, I'm going to
8 see if you can pick the guy out, and I said,
9 okay. My daddy-in-law -- and I believe I'm
10 right -- he moved him down that way so we
11 wouldn't be standing beside each other. (Witness
12 indicating).

13 Q. Okay.

14 A. Okay. Well, I read over it. I signed
15 it, and I dated it. I flipped it over and
16 looked at it, and I said, there he is.

17 Q. Okay. And how far away was your daddy-
18 in-law?

19 A. Oh, he was down the showcases. It was
20 probably the third or fourth front row chair,
21 however you want to -- you want to figure that
22 thing.

23 Q. And did he stay down there while he
24 marked his photograph?

25 A. Yes, sir.

1 Q. Okay. Did he move next to you before
2 he marked his photograph?

3 A. No, sir.

4 Q. Did he move next to you before you
5 marked your photograph?

6 A. No, sir. He was sitting on a chair
7 when Mr. Stallings come in. We were just
8 separated in general.

9 Q. So your testimony here today is that
10 Agent Stallings separated the two of you, and
11 the two of you stayed separated while you marked
12 your photographs?

13 A. Yes, sir.

14 MR. DAVIS: Your Honor, that's all I
15 have.

16 THE COURT: All right. Any re-direct?

17 MR. COLEMAN: Very briefly, Your Honor.

18 RE-DIRECT EXAMINATION

19 BY MR. COLEMAN:

20 Q. You were asked some cross examination
21 about your level of attentiveness to Mr. Hearn
22 because of the hairstyle you described him as
23 having.

24 You said it was dreadlocks, correct?

25 A. Yes, sir.

1 Q. All right. And you kind of described
2 what those were.

3 A. Right.

4 Q. Other people wear their hair like that,
5 don't they?

6 A. Okay. Yes, sir, I'm sure.

7 Q. I mean -- okay. You've seen other
8 people with dreadlocks like --

9 A. Yeah, I sure have.

10 Q. Okay. I mean, it may not be common in
11 Nettleton, but you have seen it.

12 A. Yes, sir.

13 Q. And you wouldn't just pick his photo
14 out because he had that hairstyle, would you?

15 A. No, sir.

16 Q. Then was it based on other --

17 A. Well, I just saw --

18 Q. -- characteristics?

19 A. -- I just -- I just saw his face. I
20 knew him when I saw him. Okay? You know, I
21 don't know if the hair had something to do with
22 it, but when I saw his face go in front of me
23 and he showed me those pictures, that hit me
24 that that was him.

25 Q. Okay. Well, I just want to make sure

because on cross examination it -- well, let me just say this: It wasn't solely based on the dreadlocks, but your identification of him was also based on your having seen his facial features.

Is that a fair statement?

A. Yes, sir.

MR. COLEMAN: Thank you. Nothing -- nothing further, Your Honor.

THE COURT: All right. You can step down.

THE WITNESS: Thank you.

(TESTIMONY CONCLUDED AT 11:20 A.M.)

THE COURT: Let's take a short recess, about five minutes.

(WHEREUPON, THERE WAS A SHORT BREAK, AND THE PROCEEDINGS THEN CONTINUED AS FOLLOWS:)

THE COURT: Who would you call next?

MR. COLEMAN: Your Honor, the Government will call Mr. James Gillentine.

(SHORT PAUSE).

JAMES GILLENLINE,
having been first duly sworn by the Clerk, was examined and testified as follows:

MR. COLEMAN: May I proceed, Your

1 Honor?

2 THE COURT: You may.

3 MR. COLEMAN: Thank you.

4 DIRECT EXAMINATION

5 BY MR. COLEMAN:

6 Q. State your name for the record, please.

7 A. Pardon.

8 Q. State your name.

9 A. James Gillentine.

10 Q. Okay. Mr. Gillentine, where do you
11 live?

12 A. I live in Aberdeen.

13 Q. And what is your current occupation?

14 A. I run a grocery store right now.

15 Q. Okay. Is that in Monroe County?

16 A. No. It's in Lee County.

17 Q. Lee County, Richmond.

18 A. That's correct.

19 Q. Now, Mr. Gillentine, let me call your
20 attention back to July 9th, 2009.

21 And let me ask you: What were you doing at
22 that time as far as your occupation or your
23 business?

24 A. G&G Auto Exchange, a car lot.

25 Q. And was that located in Nettleton,

1 Mississippi?

2 A. It was.

3 Q. And was it also a business that had
4 adjoining offices with the Gold Exchange Gun and
5 --

6 A. Side-by-side.

7 Q. Side-by-side?

8 A. Uh-huh (affirmative response).

9 Q. Did they have an adjoining door?

10 A. They did.

11 Q. Okay. And, I believe, the Gold
12 Exchange was at that time owned by your
13 daughter; is that correct?

14 A. That's correct.

15 Q. And she has since sold it to her
16 husband, who she is now married to,
17 Mr. Burroughs, who just testified before this
18 Court.

19 A. I think so.

20 Q. Okay. Now, on July 9th, 2009 in the
21 morning hours, were you there with
22 Mr. Burroughs?

23 A. I was.

24 Q. And what were y'all doing?

25 A. We was sitting in the car lot office.

1 Q. And did anything unusual happen?

2 A. Yes.

3 Q. And what was that?

4 A. Two black males pulled up right in
5 front of the car lot office.

6 Q. Okay. What -- what was unusual about
7 that?

8 A. They got out and started in the pawn
9 shop.

10 Q. Okay. Let me say: It wasn't unusual
11 that they drove up and they got out --

12 A. No, sir.

13 Q. -- but did you see them drive up?

14 A. I did.

15 Q. All right. And were they driving a
16 Ford Escape?

17 A. They was.

18 Q. And did you see the driver as he got
19 out of the vehicle?

20 A. Yes, sir. It is all glass there. You
21 can see through the mirror glass. They couldn't
22 see me, but I could see them.

23 Q. Okay. And did you -- when you were
24 sitting in the office of the auto sales, when
25 you say you saw them pull up, how far were you

1 from them when they got out of the vehicle?

2 A. When they got out of the vehicle, it
3 was -- they walked right by the door.

4 Q. Okay. Well, let me ask you this: The
5 vehicle itself -- when they pulled up in the
6 parking space and you're sitting there looking
7 at it, how close is it to you?

8 A. I would say less than 10 foot.

9 Q. Okay. Less than 10 feet. They get out
10 of the vehicle and --

11 A. Real close.

12 Q. Real close?

13 A. (Witness nodded head affirmatively).

14 Q. Okay. Can you describe the driver of
15 the vehicle?

16 A. Well, he had long Jheri curls and
17 probably around 6 foot and kind of thin, not
18 heavyset.

19 Q. Okay. Now, let me ask you this: When
20 you say, Jheri curls, do you also refer to that
21 hairstyle as cornrow?

22 MR. DAVIS: Your Honor, I object to
23 leading.

24 BY MR. COLEMAN:

25 Q. Did you say --

1 THE COURT: Sustained. You're leading
2 the witness.

3 BY MR. COLEMAN:

4 Q. You said he had Jheri curls.

5 A. Well, he had the long hair, and it was
6 plaided -- or braided on there, and there was
7 bunches of them.

8 Q. All right. Was it close to his head?
9 Were you describing a hairstyle that would be
10 close to your head or something kind of --

11 A. Hanging down.

12 Q. Hanging down kind of like ponytails?

13 A. It wasn't like ponytails, but they was
14 plaided.

15 Q. Okay. Was it all over his head?

16 A. Yes, sir.

17 Q. Did you see the other -- the passenger
18 of the vehicle get out?

19 A. I did.

20 Q. And I think you stated earlier that
21 they walked right passed the window.

22 A. Right by me.

23 Q. All right. And were you -- were you
24 watching them as they walked by?

25 A. I was.

1 Q. Was your attention called to them for
2 any particular reason?

3 A. What do you mean?

4 Q. I mean, was there some reason -- was
5 there any reason you were watching them more
6 closely than you normally would of somebody that
7 had just pulled up?

8 A. I really wasn't watching them that
9 close. I mean, they just right -- were right in
10 their face -- right in my face there. When they
11 got out, they walked right up to the door, and
12 nothing was said. They walked over to the pawn
13 shop.

14 Q. All right. Now, you said they walked
15 -- they walked into the pawn shop.

16 Did you go --

17 A. They started over to the pawn shop --

18 Q. Okay.

19 A. -- and Mark, my son-in-law, said, I
20 better go wait on them.

21 Q. And what did he do then?

22 A. Well, he screamed, James, and fell
23 against the filing cabinet, and I knew something
24 had happened. So I run to the door, and this
25 guy with all of those Jheri curls or whatever

1 you call them hanging on his face was jumping
2 over the counter.

3 Q. All right. Jumping over the counter?

4 A. Back over the showcase. And he had --
5 he had the money in his hand, a wad like that,
6 and he started out the front door. (Witness
7 indicating).

8 And I know there was another guy in there,
9 so I was afraid to run up in there. I run back
10 in the car lot office, and he come right by the
11 door. I'm talking about right by the door.

12 Q. Now, when you say, right by the door,
13 this is a door --

14 A. In the car lot office.

15 Q. -- that goes out onto the -- where the
16 car is parked out onto the street?

17 A. Out where his car was parked.

18 Q. Okay. Not the adjoining door to the
19 business?

20 A. No, sir.

21 Q. Okay. And so you exited the building?

22 A. And when he come by the door, I
23 attacked him because he didn't know I was in
24 there.

25 Q. Okay.

1 A. I opened the door, and I turned around
2 and tackled him.

3 Q. All right. Tackled him?

4 A. Yeah, we fought face-to-face.

5 Q. Okay. And did you actually go to the
6 ground?

7 A. We did.

8 Q. Were you holding on to him?

9 A. We fist fought, and I got him by the
10 Jheri curls. We got on the ground, and we
11 was -- we was fighting out there.

12 Q. Okay. And --

13 A. The other guy is the one that got me
14 off of him.

15 Q. All right. While y'all were on the
16 ground, did you have an opportunity again to
17 look at him?

18 A. Well, I could have hit him, or he could
19 me either one. We was that close. (Witness
20 indicating).

21 Q. Okay. You just held your hand up to
22 your face.

23 Y'all were just face-to-face; is that what
24 you're --

25 A. Face-to-face.

1 Q. Pardon.

2 A. We was face-to-face --

3 Q. Okay.

4 A. -- all over each other.

5 Q. And then what happened?

6 A. Well, the -- the little guy come out
7 there and hit me and got me off of him, and I
8 rolled off out of the way. They got in the car
9 and left.

10 Q. You said he -- let me back up just a
11 minute. You had mentioned that when you saw the
12 person with the hair that you described as being
13 Jheri curls or the one with the hair that was
14 different -- a different hairstyle, you said he
15 jumped over the counter with money in his hand?

16 A. That's right.

17 Q. Where was the money when the fight was
18 going on?

19 A. It was in -- oh, he had throwed it in
20 the car.

21 Q. Okay. You saw him do that?

22 A. Yes, sir.

23 Q. Okay. And that was right before you
24 tackled him?

25 A. That's when I attacked him.

1 Q. When you tackled him?

2 A. Uh-huh (affirmative response).

3 Q. Okay. All right. Now, you said that
4 this other person got -- got -- got him off of
5 you?

6 A. That's right.

7 Q. And what did you do?

8 A. I didn't do nothing but I had a -- they
9 got in the car and left, and I run up in the
10 shop and got a gun out there in the pawn shop.
11 And I fired a couple of shots at them, but they
12 had done got on the highway.

13 Q. Okay. When you fired the shots, were
14 they -- were they a pretty good distance from
15 you?

16 A. (No response).

17 Q. Well, let me just ask you: How far
18 would you estimate they were when you fired the
19 shots?

20 A. Well, they had done backed out on the
21 highway, so I would say 50 foot, maybe more, 75
22 or 100. I don't know exactly.

23 Q. You weren't there -- they weren't still
24 sitting in the parking space, though?

25 A. No.

1 Q. They had already pulled out?

2 A. Yes, sir.

3 Q. Okay. Now, after you fired the shots,
4 did you go in to check on Mr. Burroughs?

5 A. I did.

6 Q. And who else arrived there on the
7 scene?

8 A. Well, the police and all of the
9 neighbors and the news people and, I think, the
10 ambulance.

11 Q. All right. You mentioned the news
12 people.

13 Did you offer a \$1,000 reward for
14 information?

15 A. I did.

16 Q. Some time after the date this occurred,
17 did -- did anyone respond to that offer for a
18 reward?

19 A. Yes. This guy come to me -- come to my
20 house, as a matter of fact, and told me he knew
21 who did it. He was up in the house with them,
22 and he knew who did it, that they were bragging
23 about it and all.

24 Q. Okay. And what information did this
25 individual provide to you?

1 A. Well, he took me and showed me where
2 they was at.

3 Q. All right.

4 A. He showed me the house they was in.

5 Q. He took you where?

6 A. To Verona.

7 Q. And after you went to Verona, what did
8 you do?

9 A. I called Ricky Payne and told him about
10 it, and they come up there and met with Verona
11 police. And they went over -- I took them by
12 there and showed them where the house was and --

13 Q. All right. When you took them by
14 there, did you see anybody that -- that you
15 thought was one of the people that had been in
16 the store?

17 A. No, sir.

18 Q. Okay. So you took Ricky Payne and
19 other law enforcement officers to the house on
20 Panel Street.

21 Did you stay there while they questioned the
22 individuals?

23 A. I did not.

24 Q. What did you do?

25 A. Well, the guy told me where the car

1 was, and I went over to Plantersville where the
2 car was. He showed me where the car was, and I
3 called Ricky Payne. And after all of this was
4 over with, he -- he come on over there, and they
5 searched the car.

6 Q. Now, when Chief Payne got to where
7 the -- the car, that would be the Ford Escape --
8 that was in Plantersville; is that correct?

9 A. It was.

10 Q. And you were there at the scene.

11 When Chief Payne got there, did he have a --
12 did you notice if he had a key to the vehicle?

13 A. I don't remember.

14 Q. Okay. Do you recall him getting in the
15 vehicle --

16 A. He did.

17 Q. -- opening the door to the vehicle?

18 A. He did.

19 Q. All right. To your knowledge, did he
20 retrieve anything from the vehicle?

21 A. He found some driver's license in
22 there, and when he showed me those driver's
23 license, I told him that was the guy that I got
24 in the fight with that robbed us.

25 Q. Okay. I'm going to show you -- on the

1 screen in front of you, you should see what's
2 been marked Government's Exhibit Number 1.

3 What is -- what is that? Do you recognize
4 that photograph?

5 A. (Examining document). That's the
6 driver's license.

7 Q. Is it a photocopy of the driver's
8 license that was shown to you?

9 A. Yes, sir.

10 Q. Now, is that the -- the hairstyle or
11 the type of hairstyle that you've been referring
12 to?

13 A. That's right, yes, sir.

14 Q. The person in that photograph has that
15 type of hairstyle?

16 A. That's right.

17 Q. Now, after -- after that incident, the
18 occasion where you were shown the driver's
19 license, a few days later, July 20th, 2009,
20 which would be, I believe, 7 days after you were
21 shown the driver's license photo and 11 days
22 after the actual robbery, were you shown a
23 series of photographs by ATF Agent Dale
24 Stallings?

25 A. I was.

1 Q. Where were you when he showed you those
2 photographs?

3 A. At the Gold Exchange.

4 Q. And that was a little less than a --
5 what did -- I believe it was 11 days after the
6 robbery had occurred; is that correct?

7 A. I don't know that for sure.

8 Q. Okay. Well, let me just ask you this:
9 Was it within a couple of weeks?

10 A. Yes, sir.

11 Q. Okay. It wasn't too long a period of
12 time?

13 A. Just a little bit after.

14 Q. And who else was present at the Gold
15 Exchange with you?

16 A. Mark Burroughs, my son-in-law.

17 Q. Were you given any instructions by
18 Agent Stallings before -- any written
19 instructions before you looked at the
20 photographs?

21 A. Yes, sir.

22 Q. Do you remember what those instructions
23 told you to do?

24 A. I don't remember it all, but he was
25 telling us to be careful and -- well, I couldn't

1 tell you all that was said.

2 Q. Okay. But you did read the
3 instructions?

4 A. Yes, sir.

5 Q. Okay. And do you recall how many
6 photos you were shown for each suspect?

7 A. I think six.

8 Q. Okay. Do you remember how they were
9 displayed; how they looked when they were in
10 front of you on a piece of paper?

11 A. They were just there on the top and
12 there on the bottom.

13 Q. Let me just show you an exhibit,
14 Government's Exhibit -- Composite Exhibit Number
15 2.

16 Is this the document that you were referring
17 to when I was asking you about the instructions?

18 A. (Examining document). Yes, sir.

19 Q. And, in fact, it has four statements on
20 there about how you should view the photographic
21 lineup.

22 Do you see your signature on that page?

23 A. Yes, sir.

24 Q. And it's dated July 20th, 2009; is it
25 not?

1 A. I remember reading it. I just didn't
2 know what it said.

3 Q. I understand. But you do recognize
4 your signature?

5 A. Yes, sir.

6 Q. And you signed this after you read it?

7 A. I did.

8 Q. On Page 2 of that document or that
9 exhibit, there are six photographs. One of them
10 is circled.

11 Did you circle that photograph?

12 A. (Examining document). I did.

13 Q. How do you know that you circled that?

14 A. Pardon.

15 Q. How do you know that you circled that
16 photograph?

17 A. Well, that's my initials right there.

18 Q. And did you also date it?

19 A. I did.

20 Q. And the same with the third page of
21 that exhibit. There are six photographs; one of
22 which is circled with initials.

23 Are those your initials again?

24 A. (Examining document). They are.

25 Q. Now, on the second page, the one that

1 you circled, is that the same individual that --
2 that you saw at your store the day of the crime?

3 A. That's correct.

4 Q. And the same individual who was in the
5 photograph on the driver's license that was
6 shown to you by Ricky Payne?

7 A. Yes, sir.

8 Q. Now, your identification of Mr. Hearn,
9 was that based on what you remember seeing or
10 your memory from watching him get out of the car
11 and walk passed and then your later struggle
12 with him as you had fallen on the ground?

13 A. I couldn't have picked him out without
14 looking at those driver's license.

15 Q. Okay. But when you --

16 A. I was face-to-face with him.

17 Q. Okay. But when you first saw the
18 driver's license, you knew that was him?

19 A. Oh, yes, sir.

20 Q. Okay. When you were shown these photos
21 by Agent Stallings, did you have any reason to
22 hesitate? Did you have to think about it, or
23 did you just mark it?

24 A. I just marked it, is how I did it.

25 Q. And you -- as I understand it, you and

1 Mr. Burroughs were both present in the same
2 room. I believe the photos were placed on a
3 glass display case --

4 A. That's correct.

5 Q. -- by Agent Stallings for you to look
6 at.

7 Did either of you -- did y'all talk to one
8 another before you marked which photograph was
9 Mr. Hearn or which photograph you thought was
10 Mr. Montgomery?

11 A. No, sir.

12 Q. You marked it independently of one
13 another?

14 A. That's right.

15 Q. Did Agent Stallings in any way suggest
16 to you which photos you should mark?

17 A. No, sir.

18 Q. Now, you've been here in the
19 courtroom. I haven't really noticed.

20 Have you had an opportunity to look around
21 the courtroom, and have you -- have you seen the
22 person who you identified as being Mr. Hearn,
23 one of the suspects or one of the robbers?

24 A. Yes, sir.

25 Q. Okay. Do you see him in the courtroom?

1 A. Yes, sir.

2 Q. Would you point to him and describe
3 what he's wearing, please.

4 A. Back over yonder. (Witness
5 indicating).

6 Q. Okay. You're pointing to whom? Can
7 you describe what he's wearing?

8 A. Well, he's wearing an orange jumper
9 suit of some kind.

10 Q. Okay.

11 MR. COLEMAN: Your Honor, I would ask
12 the record to reflect the witness has identified
13 the defendant in this case.

14 THE COURT: All right.

15 BY MR. COLEMAN:

16 Q. When you chose the photograph of
17 Mr. Hearn; when you circled his photo in that
18 photographic lineup or display, did you do that
19 based on your opportunity to see him at your
20 store the day of this crime?

21 A. Yes, sir.

22 Q. Okay. Did you also do it -- the
23 attention that you paid to him as he got out of
24 the car and that you had an opportunity to see
25 him then and then later as you struggled with

1 him?

2 A. Yes, sir.

3 MR. DAVIS: Your Honor --

4 THE COURT: You're leading the
5 witness. You've been over this territory
6 before, Mr. Coleman.

7 MR. COLEMAN: Yes, Your Honor.

8 BY MR. COLEMAN:

9 Q. Mr. Gillentine, did -- did the physical
10 description of the persons that you chose in the
11 photo lineups match the descriptions that you
12 had given law enforcement of those that robbed
13 you that day?

14 A. I think so.

15 MR. COLEMAN: The Court's indulgence,
16 Your Honor.

17 (SHORT PAUSE) .

18 MR. COLEMAN: We tender the witness.

19 MR. DAVIS: May I proceed, Your Honor?

20 THE COURT: You may.

21 CROSS EXAMINATION

22 BY MR. DAVIS:

23 Q. Good morning, Mr. Gillentine.

24 A. Good morning.

25 Q. My name is Chip Davis. I represent

1 Mr. Hearn.

2 Mr. Gillentine, have you -- isn't it true,
3 sir, you've given obviously statements in the
4 past on this case? Well, not --

5 A. I've given one.

6 Q. -- statements. You've given statements
7 to law enforcements about this -- law
8 enforcement about this case.

9 A. I think so.

10 Q. All right. And isn't it true, sir,
11 that in those statements you describe the person
12 you fought with as having cornrow style hair; is
13 that true?

14 A. What is cornrow?

15 Q. I don't know, sir. That's -- isn't
16 that -- wasn't that your description?

17 A. No, sir. I don't -- I didn't know they
18 had hair plaided all over like that.

19 Q. You don't recall telling law
20 enforcement that their hair was cornrowed?

21 A. I don't remember -- believe I ever said
22 cornrow.

23 Q. Okay.

24 A. I may not -- I may have said Jheri
25 curl, but I didn't say cornrow, I don't think.

1 Q. All right. Now, do you recall having
2 made a statement regarding shooting at this
3 vehicle, that the vehicle should have bullet
4 holes in the back of it?

5 A. I did.

6 Q. All right. You're certain that you hit
7 the vehicle?

8 A. I thought I did.

9 Q. You're a pretty good shot?

10 A. No, sir. My face was bleeding.

11 Q. All right. But you were certain at
12 that time that a few of your shots had struck
13 the vehicle?

14 A. I thought they had.

15 Q. Now, tell me about this individual who
16 came to your house and gave you information.

17 Who was that individual?

18 A. I don't know who he was.

19 Q. Have you ever seen him before?

20 A. No, sir.

21 Q. Did he give you his name?

22 A. He did.

23 Q. Okay. What was that name?

24 A. I don't remember.

25 Q. Have you seen him since?

1 A. No, sir.

2 Q. Okay. Did you tell law enforcement how
3 to contact him?

4 A. I did.

5 Q. Okay. Do you know whether they
6 contacted him or not?

7 A. I think they did.

8 Q. All right. Any explanation then as to
9 why Deputy Payne would not know who the
10 individual was that you gave the information to?

11 A. No.

12 Q. Okay.

13 A. I don't know about that now. I don't
14 know. I think I told the ATF agent.

15 Q. Okay. Now, do you know whether that
16 individual was reliable or not reliable?

17 A. No, sir.

18 Q. Do you know whether that person was a
19 convicted felon or not a convicted felon?

20 A. No, sir.

21 Q. Do you know whether that person maybe
22 had a grudge against Mr. Hearn or didn't?

23 A. No, sir.

24 Q. Did you give him his \$1,000?

25 A. I did.

1 Q. So your testimony earlier was that when
2 Chief -- at that time that Chief Payne showed
3 you the driver's license, you said, that's the
4 guy, or something to that effect.

5 A. I told him that was the guy.

6 Q. Okay. Any reason why Deputy Payne
7 would not remember you having made that
8 statement?

9 A. I don't know.

10 Q. Do you recall any details about that --
11 that vehicle, the vehicle that the men who
12 robbed the store drove away in?

13 A. What do you mean?

14 Q. What kind of vehicle was it?

15 A. It was a Ford Escape.

16 Q. Okay. What color was it?

17 A. I think it was kind of gray looking.

18 Q. Kind of gray looking?

19 A. (Witness nodded head affirmatively).

20 Q. Now, do you recall Agent Stallings
21 coming to your place of business and showing you
22 these photographs?

23 A. Agent --

24 Q. The -- the ATF agent.

25 A. What kind of photographs?

1 Q. The photographic lineup.

2 A. Oh, yeah, I do.

3 Q. Now, tell the Court what happened.

4 Did -- did he put -- did Agent Stallings put
5 you in an office or -- and then show them to you
6 by yourself? How -- physically how did that go?

7 A. He didn't.

8 Q. Okay. How did -- how did you look at
9 them? Where were you physically placed when you
10 were looking at them?

11 A. My son-in-law was on one side of the
12 showcase down there, and I was back up here.
13 (Witness indicating). He come in and asked us
14 to do that, and we identified them. That's what
15 we did. I did -- I identified them.

16 Q. Okay. Did your son-in-law do the same?

17 A. He did.

18 Q. Okay. And did you stay at your end of
19 the showcase, and did your son-in-law stay at
20 his end of the showcase?

21 A. We wasn't right next to one another, if
22 that's what you mean.

23 Q. Okay. Well, I guess my question is:
24 Agent Stallings put you in one place and put
25 your son-in-law in another place; is that

1 correct?

2 A. Yeah, I would say so.

3 Q. Okay. So while y'all were marking the
4 photographs, did you stay where Agent Stallings
5 put you?

6 A. Yeah.

7 Q. You didn't move together before you
8 marked the photographs?

9 A. No.

10 MR. DAVIS: Your Honor, that's all I
11 have.

12 THE COURT: All right. Do you have
13 anything further, Mr. Coleman?

14 MR. COLEMAN: No additional questions,
15 Your Honor.

16 THE COURT: Okay. You may step down.

17 THE WITNESS: Thank you.

18 (TESTIMONY CONCLUDED AT 11:50 A.M.)

19 THE COURT: Does the Government have
20 any further witnesses?

21 MR. COLEMAN: No, Your Honor. The
22 Government rests.

23 THE COURT: Okay. Do you have any
24 witnesses, Mr. Davis?

25 MR. DAVIS: Your Honor, may I have a

1 brief indulgence?

2 THE COURT: You may.

3 (SHORT PAUSE).

4 MR. DAVIS: Your Honor, may I speak
5 with the U.S. Attorney's office for one moment?

6 THE COURT: You may. Well, let me say
7 this: It's almost noon. I'm going to recess
8 until 1:00. If you need to put on proof or you
9 want to make an argument at that time, we will,
10 but you go ahead and talk to him and
11 announcement it. You just let me know.

12 MR. DAVIS: Yes, sir.

13 MR. COLEMAN: Okay.

14 THE COURT: Do y'all want to confer?

15 MR. DAVIS: Yes, sir.

16 THE COURT: Would you rather go ahead
17 and recess?

18 MR. DAVIS: Yes, sir.

19 THE COURT: Okay. Well, we'll take our
20 noon recess, and we'll start back at 1:00.

21 (WHEREUPON, THERE WAS A SHORT BREAK,
22 AND THE PROCEEDINGS THEN CONTINUED AS FOLLOWS:)

23 MR. DAVIS: Your Honor, if it pleases
24 the Court, I call Agent Stallings to the stand,
25 please.

THE COURT: All right.

MR. DAVIS: May I proceed, Your Honor?

THE COURT: You may.

DALE STALLINGS,

having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Good afternoon.

A. Good afternoon.

Q. Agent Stallings, during the break you and I spoke just for a moment; did we not?

A. Yes, we did.

Q. All right. And do you see the photograph that is currently displayed on the screen?

A. (Examining document). I do.

Q. All right. And is that a photograph that was presented to you as part of this investigation by then Chief of Police Payne, now Deputy Payne?

A. It is. He provided me a -- several photos on a CD of the vehicle that was taken that we discussed earlier.

Q. All right. And was it represented to

1 you by then Chief of Police Payne that these
2 photographs were of the vehicle that he found
3 pursuant to Mr. Gillentine's information?

4 A. That's correct.

5 MR. DAVIS: Your Honor, I'm just going
6 to display the remainder of these photographs,
7 if I can.

8 BY MR. DAVIS:

9 Q. Now, that appears to be the rear of the
10 photograph?

11 A. (Examining document). Yes.

12 Q. I'm sorry. The rear of the vehicle?

13 A. Yes.

14 Q. And there's a photo in here where it
15 looks like some sun is hitting part of the
16 vehicle.

17 Do you see that?

18 A. I do.

19 Q. And that looks like a pretty close up
20 of the door.

21 A. Yes.

22 Q. Okay. And, again, that is the vehicle
23 that the deputy represented to you he sees
24 pursuant to Mr. Gillentine's information.

25 A. Yes.

1 Q. Okay. Now, did you hear Mr. Gillentine
2 and the other witness testify that the -- the
3 thieves drove up in a gray vehicle?

4 A. I did.

5 Q. All right. That vehicle is green,
6 isn't it?

7 A. It is.

8 Q. It's not gray?

9 A. It doesn't appear to be.

10 MR. DAVIS: Your Honor, I tender the
11 witness.

12 THE COURT: Mr. Coleman.

13 MR. COLEMAN: Very briefly, Your Honor.

14 CROSS EXAMINATION

15 BY MR. COLEMAN:

16 Q. Agent Stallings, Mr. Davis mentioned
17 about the sun hitting the vehicle.

18 We really don't know exactly what the
19 conditions were out there the day of this
20 robbery, do we, I mean, as far as what the --
21 what Mr. Gillentine and what Mr. Burroughs were
22 seeing parked out in the front?

23 Whether it was in the shade or in the
24 daylight or what have you, we don't know.

25 A. That's correct.

1 Q. Okay. And the color --

2 THE COURT: Mr. Coleman, this truck was
3 not in the lineup. I wouldn't worry about it.

4 MR. COLEMAN: No further questions.

5 THE COURT: Do you have any further
6 questions for this witness?

7 MR. DAVIS: Nothing for this Court.

8 THE COURT: Do you rest?

9 MR. DAVIS: Your Honor, the defendant
10 will rest subject to brief argument.

11 THE COURT: Okay. Would you like to go
12 first?

13 MR. DAVIS: Yes, sir, if it pleases the
14 Court.

15 THE COURT: Okay.

16 MR. DAVIS: May I proceed, Your Honor?

17 THE COURT: You may.

18 MR. DAVIS: Your Honor, in the
19 Government's brief, the Government responded to
20 our Motion to Suppress the in-court -- or the
21 out-of-court and the in-court identifications by
22 acknowledging that the out-of-court
23 identification procedure, specifically the
24 driver's license presentation of the single
25 photograph, was suggestive and was unnecessarily

1 suggestive. I think that has been confirmed by
2 the in-court testimony.

3 If it pleases the Court, Your Honor,
4 the Government responded that even though this
5 was an unnecessarily suggestive procedure, the
6 in-court identification and the out-of-court
7 identification testimony should not be
8 suppressed because there were other indications,
9 given the totality of the circumstances, that
10 the identification was reliable.

11 I submit to the Court that the evidence
12 today has shown just the opposite. To begin
13 with, the -- the existence of this -- the way
14 Mr. Hearn was identified as being the individual
15 with the cornrows was through a \$1,000 offer
16 reward.

17 In other words, Mr. Gillentine got on
18 the television shortly after the robbery and
19 said, anybody who tells me who did this, I'll
20 give you \$1,000, or words to that effect.

21 Well, shortly thereafter, he was
22 contacted by a person who is now unknown to
23 Mr. Gillentine. He was unknown at that time. I
24 asked the deputy who the person was, then the
25 Chief of Police of Nettleton, and he didn't know

1 who the person was.

2 He didn't know anything about their
3 reliability. He didn't know anything about
4 their credibility. All he knew was that they
5 responded directly to Mr. Gillentine on the
6 promise of a \$1,000 reward, which they were
7 ultimately paid.

8 So to begin with, the identification of
9 Mr. Hearn as being this person should be suspect
10 because there was a financial reward involved.
11 We don't know if this person -- who this person
12 is or whether this person had a grudge against
13 Mr. Hearn or whether this person was, perhaps,
14 just needing the money. We don't have any of
15 that information.

16 Setting that aside, we know that
17 initially, according to the deputy's testimony,
18 Mr. Gillentine and Mr. Burroughs identified the
19 person who struck Mr. Burroughs or one of the
20 participants in the robbery as having a cornrow
21 hairstyle.

22 Well, even though they identified him
23 at first as having a cornrow hairstyle, today
24 Mr. Burroughs talked about dreadlocks, and
25 Mr. Gillentine talked about Jheri curls.

1 Well, we know that Mr. Hearn, his
2 driver's license photo when it was taken, had
3 dreadlocks rather than cornrows. We also know
4 that when he was seen a few days after the
5 robbery, he had a shaved head. He didn't have
6 any hair at all.

7 So the person who robbed them was at
8 first described as having one hairstyle, and
9 then when it turned out that Mr. Hearn, the
10 person identified by this anonymous informant
11 who received \$1,000, had a different hairstyle.
12 Now we hear about dreadlocks and corn- -- or
13 dreadlocks and Jheri curls.

14 Add to that, Your Honor, the issue of
15 the vehicle itself. Both witnesses identified
16 the vehicle that the robbers and assailant drove
17 up in as being charcoal or gray.

18 This vehicle that was seized pursuant
19 to the informant's testimony is green. This was
20 the vehicle, if the Court will recall, when the
21 officer opened the door, he found -- or says he
22 found Mr. Hearn's driver's license in the door
23 pocket. Well, that's not a gray vehicle.
24 That's a green vehicle.

25 Shortly after the robbery,

1 Mr. Gillentine told -- or was heard to say that
2 he had fired at the vehicle as it was driving
3 away and believed that he had hit it and
4 believed that that vehicle should have bullet
5 holes in it. Well, the Court saw pictures of
6 the rear end of that vehicle. There were no
7 bullet holes in that -- in that vehicle.

8 So, Your Honor, not only was the
9 procedure used in these identifications
10 suggestive and suggestive in another way; not
11 only was he shown the driver's license and not
12 only was he given this information by some
13 unknown source who was then paid \$1,000, but
14 beyond that, if the Court will recall the
15 testimony of Agent Stallings.

16 When Agent Stallings went to show them
17 the proper photographic lineup, he put one
18 gentleman at one end of a counter and the other
19 gentleman at the other end of the counter, and
20 he said then they slid back together and marked
21 their -- marked their sheets. Well, when I
22 asked those gentlemen, is that what you did,
23 they both denied it and said that they did not
24 do any such thing.

25 So, if it please the Court, not only do

1 we have a suggestive identification process that
2 is admittedly suggestive by the Government, but
3 we also have several indicia, a hairstyle and
4 the color of the vehicle, that show the --
5 the -- not only was it suggestive, but the
6 identification of Mr. Hearn as the person is
7 unreliable.

8 And for that reason, if it pleases the
9 Court, we move that both the out-of-court
10 identification as well as the in-court
11 identification be suppressed at trial.

12 THE COURT: All right. Thank you.
13 Mr. Coleman.

14 MR. COLEMAN: Your Honor, if it pleases
15 the Court, the Government's response did set out
16 a couple of cases that lead the Government to
17 the opinion that the Court could find that the
18 identification and procedure in this case was
19 both suggestive and unnecessary, which I think
20 the Court probably would come to that
21 conclusion.

22 However, as the Court is aware, there
23 are cases going back to, as cited in the
24 Government's response, the Neil versus Biggers
25 case from 1972, a United States Supreme Court

1 case, which sets -- sets forth the proposition
2 that the -- the defendant's due process rights
3 were not violated unless the -- the lineup or
4 the photo show up, what have you, was
5 unnecessary, suggestive and unreliable.

6 And the Government contends that based
7 on the testimony presented in court today, that
8 the identification was, in fact, reliable. The
9 Government went to great lengths to have the
10 witnesses testify about the opportunity both
11 witnesses had to -- to see, to view, to witness
12 these indiv- -- these two individuals who were
13 later identified.

14 Now, counsel opposite makes much ado
15 over whether it's referred to as a cornrow or a
16 dreadlock or a Jheri curl, I think it was
17 called.

18 What we do know is that both of the
19 victims, the witnesses in this case, have
20 identified the individual in the photograph, the
21 driver's license that was shown to them in this
22 show up and also from photographic display that
23 was provided to them by Agent Stallings.

24 They identified that person with that
25 particular hairstyle as being the individual or

1 one of the individuals that -- that committed
2 the robbery that day.

3 So I think that speaks to -- you know,
4 whether they want to call it cornrows or Jheri
5 curls or whatever, they both said, that's the
6 person, and that's --

7 THE COURT: Well --

8 MR. COLEMAN: -- the style hair.

9 THE COURT: -- you said in your brief
10 that there was a drive-by identification. I
11 don't -- I didn't hear any proof today of any
12 drive-by identification.

13 MR. COLEMAN: Your Honor, there was --

14 THE COURT: That would be what I think
15 of as show up.

16 MR. COLEMAN: Well, there's -- when I
17 refer to the show up, what I'm referring to is
18 the driver's license that was shown by Chief
19 Payne to both of the individuals. I think there
20 was some confusion as to whether --

21 THE COURT: When you say in your brief
22 that, the Government expects the proof to show
23 that law enforcement did not arrange the drive-
24 by identification, there's been no proof of
25 drive-by identification.

1 MR. COLEMAN: Your Honor, that is what
2 the Government expected to prove but then --

3 THE COURT: You didn't prove that, did
4 you?

5 MR. COLEMAN: No, sir, I did not.
6 Actually --

7 THE COURT: All right.

8 MR. COLEMAN: -- I proved that there
9 was no such --

10 THE COURT: I've heard enough. I've
11 heard enough, I think, Mr. Coleman. Well, you
12 can -- you can --

13 MR. COLEMAN: I just want to -- if I
14 can point out the factors that are set forth in
15 the Biggers -- Neil v. Biggers case.

16 THE COURT: I'm not interested in the
17 factors of the case.

18 MR. COLEMAN: Your Honor, when I first
19 heard it in, I believe it was, 1984, I thought
20 it was interesting, and it still today kind of
21 brings a chuckle.

22 That Court said the central question
23 was, whether under the totality of the
24 circumstances, the identification was reliable
25 even though the confrontation procedure was

1 suggestive.

2 And then it says, as indicated by our
3 case, the factors to be considered in evaluating
4 the likelihood of misidentification include,
5 first, the opportunity of the witness to view
6 the criminal at the time of the crime. Second,
7 the witness's degree of intention.

8 Third, the accuracy of the witness's
9 prior description of the criminal. Fourth, the
10 level of the certainty demonstrated by the
11 witness at the confrontation, and, fifth, the
12 length of time.

13 And, of course, other cases cited in
14 the Government's response also set forth the
15 Neil or -- Neil v. Biggers factors; one being
16 Mattson versus Brathwaite, and then more
17 recently the Heffron case, which is a Fifth
18 Circuit case in 2002, and the Annador Quarterman
19 (phonetic) case, a 2006 case, which sets forth
20 those same factors.

21 And the witnesses testified that they
22 did have ample opportunity. Their intention was
23 on both of these individuals. They testified as
24 to why their attention was drawn to these
25 individuals.

1 Especially Mr. Gillentine, who had an
2 opportunity not only to see them as they entered
3 his store, but as he wrestled, as he referred to
4 it, face-to-face with Mr. Hearn or the
5 individual with the distinctive hairstyle.

6 Again, Your Honor, the Government's
7 position in this matter is that the
8 identification, even though having been shown
9 this -- this photograph, this show-up type
10 identification, the display -- or the
11 identification of the photos in the display, was
12 reliable due to their opportunity to -- to view
13 and to -- to see these two individuals prior to
14 being shown that iden- -- that driver's license
15 photo.

16 THE COURT: All right.

17 MR. COLEMAN: So with that, the
18 Government would argue that the defendant's --

19 THE COURT: Go sit down.

20 MR. COLEMAN: Yes, sir. That his due
21 process rights have not been violated.

22 THE COURT: Okay. Do you have anything
23 else,

24 MR. DAVIS: No, Your Honor.

25 THE COURT: All right. I have heard

1 the proof offered in this case. I have read the
2 brief and the motion. It seems like the
3 critical issue to me is whether or not
4 Mr. Gillentine confirmed his identification of
5 Hearn to the officer at the time he was shown
6 the driver's license the first time.

7 I heard Mr. Gillentine testify from the
8 stand. He stated -- if I wrote it down --
9 (short pause) -- quote, I could pick him out
10 without looking at the license.

11 He also testified that when he was
12 shown the license by the police chief, Payne, at
13 that time he said, that was the man that robbed
14 me.

15 So prior to the photographic lineup as
16 set forward by Agent Stallings, Mr. Gillentine
17 had already identified the defendant, and that
18 identification is sufficient to withstand the
19 challenge.

20 I'm satisfied having heard the witness
21 that he knows what he's talking about and that
22 he knows who he identified. He had a wrestling
23 match with the defendant. They were face-to-
24 face. I find his testimony credible and
25 believable.

1 As to the -- as to the Motion to Strike
2 the identification in the lineup, I'm going to
3 grant that because I don't find any fault with
4 how the ATF agent, Agent Stallings, handled it,
5 but he didn't know that the license had already
6 been shown to, at least, one of the witnesses
7 or, perhaps, both. I don't recall.

8 But to the extent that that could be
9 suggestive or influences that identification,
10 then I'm going to strike that identification
11 because I see no need for it. And I also think
12 it was an unfortunate accident that the police
13 chief had already shown the license to
14 Mr. Gillentine.

15 So your -- your motion is granted as to
16 any reference to that identification, Mr. Davis,
17 but I'm not going to strike any of the other
18 evidence because I don't know that there was any
19 other evidence that came forward from it. I
20 don't know what evidence that applies to.

21 They already had the key. They already
22 had the car. They had already identified the
23 defendant prior to the lineup photo so -- or the
24 photo lineup.

25 Is there anything further?

1 MR. COLEMAN: Not on behalf of the
2 Government, Your Honor.

3 MR. DAVIS: Did I understand the Court
4 to say that Mr. Gillentine will be allowed to
5 identify the defendant at trial?

6 THE COURT: He will because the
7 testimony, as I heard it, established that he
8 already identified the defendant before there
9 was -- there was a photo lineup, so he will be
10 allowed to so testify.

11 MR. DAVIS: Yes, sir.

12 THE COURT: But any -- any testimony as
13 to that photo lineup, I'm going to -- I'm
14 granting your motion.

15 MR. DAVIS: Yes, sir.

16 THE COURT: All right, anything
17 further?

18 MR. COLEMAN: No, Your Honor.

19 MR. DAVIS: Nothing from the defendant.

20 THE COURT: The Court will be in
21 recess.

22 (PROCEEDING CONCLUDED AT 1:20 P.M.)
23
24
25

C E R T I F I C A T E

STATE OF TENNESSEE)

COUNTY OF Shelby)

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